# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

No. ~~417.~~ 215

GEORGE B. STOVALL, ORDINARY, (WHO SUES FOR THE USE OF DAVID EUBANKS, GEORGE EUBANKS, AND JAMES M. HATCH, AND WIFE, SALLIE HATCH,) PLAINTIFF IN ERROR,

vs.

FRANCIS A. BANKS, HUGH J. OGLESBY, AND JAMES S. REED.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

**FILED APRIL 23, 1870.**

# SUPREME COURT OF THE UNITED STATES.

## No. 447.

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"STATE OF GEORGIA, *Morgan County:*

"I, G. B. Stovall, ordinary of said county, do hereby certify that the foregoing two pages are a true and perfect copy of bond given by Francis A. Banks as administrator of Alfred Eubanks, dec'd,
4 with James S. Reid & Hugh J. Ogilby security, as appears upon the records of my office.

"In witness whereof, I have hereunto set my hand & seal of office this February 9th, 1867.

"G. B. STOVALL, *Ordinary.*

"I admit that the within is a true copy of the original bond, and a stamp on the certificate is waived.

"Sept. 5, 1868.

"JNO. L. HOPKINS,
"*Att'y for Defendant.*"

Said bond was admitted and read.

Plaintiffs next offerred in evidence a duly certified copy of a bill in chancery, filed in the superior court of Morgan County, Georgia, by George Eubanks et al. vs. Francis A. Banks, administrator, &c., together with the answers of said Francis A. Banks and Ambrose Eubanks thereto, and also duly certified copies of the record in said chancery cause, containing orders, verdicts, decrees, and writs of fieri facias had and issued in the progress of said cause.

Said bill, answers, and record were, in words and figures, as follows:

5 "GEORGIA, *Morgan County:*

"To his honor Robert V. Hardeman, judge of the superior courts of the Oakmulgee circuit, holding jurisdiction in equity:

"Humbly complaining, showeth unto your honor your orators, George Eubanks, Daniel Eubanks, & William Hatch, & your oratrix, Sarah Hatch, formerly Mary Eubanks, but who intermarried with the said William Hatch, that they, the said David, George, & Mary, are the children of Thomas Eubanks, late of Chatham County and State of North Carolina, by a second marriage of the said Thomas Eubanks; that the said Thomas had, by a former marriage, as they have understood and believe, six children, to wit: Ambrose, Asa, and Alfred Eubanks, & three daughters, who married and emigrated, and it is unknown to your orators & oratrix whether they are living or dead, & if dead, whether they left children surviving or not; that Asa married and died, leaving children, whose names are unknown to your orators and oratrix.

"And your orators and oratrix further shew unto your honor that the said Alfred Eubanks removed to Georgia & located in the said county of Morgan, and, after accumulating a very good estate, departed this life on the day of , eighteen hundred and fifty , intes-
6 tate, never having married, and consequently leaving no widow or child; that one Francis A. Banks, of said county of Morgan, was, by the ordinary of said county, appointed administrator on the estate of the said Alfred, and took unto his possession the whole of his estate, consisting of lands, negroes, stock of all descriptions, tools, provender, &c., and amounting in the aggregate to forty thousand dollars or other large sum.

"And your orators and oratrix have been advised and believe that, by the statute of distributions of said State of Georgia, the whole of said estate ought to be equally divided between the brothers and sisters

of the whole and half blood on the paternal side, the child or children of any deceased child taking the share of the parent; and that your orators George and David, and your oratrix Sarah, together with her husband, the said William Hatch, are entitled to one-eighth part each of said estate, provided all the said brothers and sisters are living, or, if dead, had a child or children living at the death of the said Alfred, and if otherwise, then to such additional portion as the failure of any one or more of said distributors might create. They further represent that said Thomas Eubanks had departed this life before the death of the said Alfred.

7 "And your orators and oratrix further shew unto your honor that they have never had any advantages of education and society, and are proper victims of any artful and crafty person who would condescend to take improper advantages of them; that they understood the said Ambrose, their half-brother, claims to have purchased their interest in said estate. They represent to your honor that the said Ambrose did bring them the intelligence of the death of the said Alfred, and told them that they were not entitled to any part of his estate; that they were not legitimate children; that he had a certificate to that effect, and did produce a paper which he said was a certificate; professed great love and affection for his poor illiterate kinsmen, & said, to induce the administrator to settle, it would be necessary to get them to sign a paper; that he would give them a hundred dollars each, not by way of purchase, but as a donation, (which, however, he took good care not to pay;) and your orators and oratrix did sign a paper for him. They have heard and believe that he afterwards boasted that the paper was worth five thousand dollars to him.

"Your orators & oratrix do most submissively represent to your honor that if any such paper be brought forward to defeat their just claims to a full share in said estate, that the same was most

8 fraudulently obtained by the said Ambrose, who is a cunning, crafty man, and who, on the occasion they signed the paper referred to by them, made representations he knew to be false, both as to the certificate referred to and the amount of said estate; and your orators pray your honor, in case such a paper be relied upon, that said Ambrose be required to answer these charges under his corporeal oath, & that upon a full hearing of the facts he be decreed to surrender said paper to be cancelled and annulled.

"And your orators and oratrix represent unto your honor that none of the other distributors of said estate are willing to co-operate with them, and they pray, therefore, that, as far as they have been able to set them forth, they be made parties defendants to this bill, and that as others may be ascertained during the progress of this bill, they may also be made parties defendants to the same.

"And they further show unto your honor that more than twelve months have elapsed since letters were granted to said Francis A. Banks; that no debts of any magnitude were left unpaid by said

9 Alfred, and they well hoped that the said Francis A. would have come to a fair settlement with them and paid them over their respective shares of said estate, as in equity and good conscience he ought to have done. But now so it is, may it please your honor, that the said Francis A., combining and confederating himself with divers persons unknown to your orators and oratrix, as well as with the said Ambrose, has utterly refused to make any settlement with them whatever.

"In tender consideration of all which, and inasmuch as your orators and oratrix are remediless by the strict rules of the common law, and

can only have adequate relief in this honorable court, where such matters are properly cognizable and relievable, may it please your honor to grant unto your orators and oratrix the State's writ of subpœna, to be directed to the said Francis A. Banks and the other defendants to this bill, requiring them, under proper penalties, full, true, direct, and perfect answers to make upon their several corporal oaths to all and singular the matters and things charged and set forth in this bill, and especially whether Thomas Eubanks was not the father of your orators, George & David, & of your oratrix, Sarah; whether your oratrix Mary did not intermarry with the said William Hatch; whether Alfred Eubanks was not also the son of the said Thomas, & the half-brother on the father's side to these complainants; whether the said Thomas did not depart this life before the said Alfred; whether the said Alfred did not depart this life in year 1857, intestate, without widow or child, and leaving an estate of some forty thousand dollars; whether said Francis A. has not taken letters of administration on the same more than twelve months before the filing of this bill, and whether he has not the same now in his possession; whether said Ambrose has not interfered to prevent these complainants from getting any interest in said estate; whether the proper number of distributors are not set forth in this bill, together with all other matters herein set forth; that said defendants may be required to be and appear at the next term of this honorable court, then and there to answer, stand to, and abide by each order and decree as may be had in the premises.

"And may it please your honor to grant unto your orators and oratrix such other and further relief in the premises as is usual in equity; and, as in duty bound, they will ever pray, &c.

"N. G. & A. G. FOSTER,
"*Sol's pro Compl'ts.*

"GEORGIA, *Georgia, Morgan County:*

"To the sheriff of Morgan County, greeting:

| | |
|---|---|
| "GEORGE EUBANKS, DAVID EUBANKS, William Hatch, and his wife, Mary, *vs.* FRANCIS A. BANKS, ADM'R, AMBROSE Eubanks, et al. | Bill for discovery, relief, & distribution. |

"To Francis A. Banks, adm'r, Ambrose Eubanks, & their confederates:

For certain causes made known to us by the bill of complaints of George Eubanks, David Eubanks, William Hatch & his wife, Mary, for discovery and relief, filed in the clerk's office of the superior court of said county, on the chancery side of same court, in which the said George Eubanks, David Eubanks, William Hatch & his wife Mary are complainants and you are the defendants, we command you and each of you that, laying all other business aside, that you be and appear before us at our superior court, to be held in and for said county on the first Monday in March next, to answer to all such matters and things as shall then & there be charged against you, and to stand to and abide such further order and decree as may be had in the premises.

"Witness the Honorable Robert V. Hardeman, judge of the said court, this 3d of February, 1859.

"JOHN C. REES, *Clerk S. C.*

12 "GEORGE EUBANKS, DAVID EUBANKS, James M. Hatch, & his wife, Sarah Hatch,
*vs.*
FRANCIS A. BANKS, ADM'R OF ALFRED Eubanks, & Ambrose Eubanks, et al.
} Bill for discovery, relief, & distribution in Morgan County superior court.

"The several answer of Francis A. Banks, adm'r of Alfred Eubanks, to the above bill of complaint.

"This defendant, after making the usual reservations, &c., for answer to the above bill of complaint, or to so much & such parts thereof as this defendant is advised is or are material for him to make answer unto, answering, says that it is true, as charged in complainants' bill, that Alfred Eubanks departed this life in the county of Morgan & State of Georgia on the day of , in the year eighteen hundred and fifty-seven, intestate, & leaving no wife or child living at the time of his death, and that it is further true that the ordinary of said county granted to this defendant letters of administration upon the estate of said Alfred Eubanks, & that more than twelve months had
13 elapsed since said letters were granted before the filing of complainants' bill; and that this defendant further states that, as administrator as aforesaid, he took charge of all the property, both real & personal, of the said Alfred Eubanks, the value of which, together with all his actings & doings in relation thereto, from the time letters of administration were granted to him up to the present time, will fully appear by reference to the returns thereon made by him to the ordinary of said county, a copy of which is hereto attached, marked Exhibit A, which he prays may be taken as a part of his answer, with leave of reference thereto as often as may be necessary.

"And for further answer this defendant says that he knows nothing of his own knowledge of the parentage of Alfred Eubanks, but has been informed that he was the son of Thomas Eubanks, dec'd, late of Chatham County, North Carolina.

"And this defendant further states, that he has been informed and notified that the said Thomas Eubanks had children borne to him by two mothers; that he had by his first wife nine children, to wit, Amos Eubanks, Asa Eubanks, Alfred Eubanks, the intestate, Ambrose Eubanks, John Eubanks, Polly Eubanks, Cainey Eubanks, & Rachel Eubanks, & that of these children, the following, to wit, Amos, John, & Cainey, he has been notified & informed, departed this life before the death of Alfred, leaving no wife or child living at the time of their deaths.

14 "And this defendant further states that he has been informed & notified that Cynthia Eubanks intermarried with one Edward H. Ward, & is now living with her husband in Greene County, Alabama, and that Polly Eubanks intermarried with one Thomas Bynum, and died some ten or twelve years since, leaving seven children living at the time of her death, all of whom were in life at the time of the death of Alfred Eubanks, &, as he has been informed and notified, are named Luke, Cynthia, John, Elmira, Caroline, (all these being of age,) Ambrose, & Gray, (the last two being minors, under the age of twenty-one,) & having Turner Bynum, of the county of Chatham, & State of North Carolina, for their guardian.

"And this defendant will here state that he has been informed that one of the children of said Polly has departed this life since the death

of the said Alfred Eubanks, to wit, John Bynum, leaving no wife or child living at the time of his death.

"And this defendant further states that he has been informed and notified that Asa Eubanks departed this life several years before said Alfred, leaving seven children, all of whom were living at the time of the death of the said Alfred, & all still in life, so far as this
15 defendant is advised or believes, to wit, Asa, Sydney, Louisa, wife of ——— Goodwin, Thomas, (all of age,) Charles, Mary, & Carney, minors under the age of twenty-one, & having for their guardian Turner Bynum, of the county of Chatham, State of North Carolina, where the minor children of the said Polly & said Asa still reside.

"And this defendant further states that Rachel Eubanks intermarried, as he has been informed & notified, with one Henry Gorman, & with her husband is still living in the State of North Carolina.

"And this defendant has also been informed & notified that Ambrose Eubanks is still in life, & residing in the county of Chatham, & State of North Carolina.

"And this defendant further states that he has been informed & notified that these & Alfred Eubanks were all the children borne to Thomas Eubanks by his wife Polly Eubanks, formerly Polly Jones, who, he has been informed, departed this life in the year eighteen hundred & twenty-four or twenty-five.

"And this defendant further answers that he has been informed & notified that the maiden name of the mother of complainants was Betsy Yarborough, who, as he has been informed & notified, was legally married to one William Wilson, who is still in life.

"And this defendant further answers that he has been informed
16 & notified that although the complainants were born whilst the said Betsy, their mother, was living with Thomas Eubanks, dec'd, yet at the time she was so living with the said Thomas Eubanks, & at the time complainants were born, her husband, William Wilson, was, & is yet, still in life, &, as this defendant has been informed and notified, the said Betsy had not been legally divorced from her husband, the said William Wilson.

"This defendant respectfully submits to this honorable court, whether complainants, under and by virtue of the statutes & laws of the State of North Carolina, are legitimate half-brothers & sisters of said Alfred Eubanks, they having been borne in the State of North Carolina, & as such entitled, under the statute of distributions of the State of Georgia, to distributive shares of the estate of the said Alfred.

"And for further answer this defendant admits that Ambrose Eubanks & others of the defendants have notified this defendant that complainants are not legitimate half brothers & sisters of the said Alfred Eubanks, & he further admits that the said Ambrose Eubanks has notified him that if complainants had any interest in the estate of the said Alfred, they had, for a consideration, released, relinquished, & quitclaim all their right, title, & interest therein to him,
17 the said Ambrose & the other brothers and sisters of the whole blood, or their representatives.

"And this defendant further answers that he knows nothing, of his own knowledge, of any of the facts or circumstances connected with the execution of said instrument of release, but that all of his information in relation thereto has been derived from said Ambrose Eubanks & complainants' bill.

"And this defendant also states that he has been informed and be-

lieves that the said Thomas Eubanks departed this life before the death of the said Alfred Eubanks.

"This defendant, having answered all the charges in complainants' bill that he has been advised or believes to be material, submits to this honorable court that the estate of the said Alfred Eubanks be taxed with reasonable attorneys' fees, for counsel & advice, in the management of the estate, as well as reasonable attorneys' fees for representing him in this litigation, together with the costs of this suit, and any other necessary expenses that may be incurred by him in the progress of this suit.

"And this defendant prays that this honorable court, upon the final hearing of said bill, will render such decree as will finally distrib-
18 ute said estate to all the persons respectively entitled to the same, setting forth the amount due to each distributee, severally, & such as will protect this defendant against any & all furtber & future liability, to any person whatever.

"And this defendant will ever pray, &c., & thence to be discharged with reasonable cost.

"FANNIN & BILLUPS,
"*Solicitors pro Defendant.*

"GEORGIA, *Morgan County:*

"In person, before me, comes Francis A. Banks, who, being duly sworn, says that what is contained in this his foregoing answer, so far as concerns his own act & deed, is true of his own knowledge, & that what relates to the acts or deeds of any other persons, he believes to be true.

"FRANCIS A. BANKS.

"Sworn to and subscribed before me this September 3d, 1859.
C. CAMPBELL, *I. I. C.*

19 "*Inventory and appraisement of the estate of Alfred Eubanks, dec'd.*

| | |
|---|---|
| One lot goats, 5 00; 1 lot hogs, 150 00 | 155 00 |
| " " beehives | 10 00 |
| 1 mule—'Darkes' | 130 00 |
| 1 do. 'Doc' | 50 00 |
| 1 " sorrel mare | 125 00 |
| 1 " Julia | 40 00 |
| 1 " grey mare | 60 00 |
| 1 " " mule | 40 00 |
| 1 sorrel mare | 55 00 |
| 1 " colt | 60 00 |
| 1 dark bay mare | 60 00 |
| 150 bushels wheat | 150 00 |
| 1 cart, 10 00; 1 large kettle, 10 00 | 20 00 |
| 1 lot cooking utensils | 1 00 |
| 1 " Irish potatoes | 5 00 |
| 1 " bacon | 200 00 |
| 1 " boxes & barrels | 3 00 |
| 1 two-horse wagon | 75 00 |
| 1 old wagon | 5 00 |
| 1 lot farming tools | 10 00 |
| 1 " cradles | 10 00 |

| | | |
|---|---|---|
| 1 lot plows, hoes, & irons | | 10 00 |
| 1 " blacksmith tools | | 10 00 |
| 1 grindstone | | 2 00 |
| 1 gin, 50 00; 1 lot cattle, 200 00 | | 250 00 |
| 2 beds, steads, & bedding | | 30 00 |
| 1 lounge | | 6 00 |
| 20 3 tables & cupboards | | 5 00 |
| 1 lot chains | | 3 00 |
| Fire dogs, shovel, & tongs | | 1 00 |
| 1 box medicine | | 50 |
| 1 lot crockery & glass ware | | 2 00 |
| 1 gun & fixtures | | 5 00 |
| 1 jug honey | | 3 00 |
| 1 lot jugs, 1 00; rope, bagging, & leather, 10 00 | | 11 00 |
| 1 water bucket | | 50 |
| 1 looking-glass, & books | | 1 00 |
| 1 pr. scales; 2 pr. balances | | 1 00 |
| 1 lot bed clothing | | 4 00 |
| 2 pr. steelyards | | 4 00 |
| 2 trunks | | 1 50 |
| 1 saddle | | 2 00 |
| 1 lot plow geer | | 5 00 |
| 3 pistols & 3 dirks | | 5 00 |
| 1 tooth twister, 1 00; 1 tin box & contents, 50 | | 1 50 |
| Part bag shot | | 60 |
| Cash on hand | | 141 00 |
| Notes on E. A. Nisbet, ex'r of the estate of R. H. Randolph, with interest from 1st Jan'y, 1855, dated 1st Jan'y, 1855 | | 447 00 |
| Notes on John I. Evans, dated 14th Feb'y, 1857, doubtful | | 15 00 |
| " " E. A. Nisbet, ex'r, R. H. Randolph, due 1st Jan'y, 1854, for | 400 00 | |
| By cr. on same, 2d Feb'y, 1857 | 91 31 | |
| | | 308 69 |
| 21 One on Jesse W. Jackson, due 25th Dec., 1856 | | 25 00 |
| One " James S. Reid, due 18th February, 1857, with interest from 1st of January, 1857 | | 164 00 |
| One on C. J. Allen, due 23d February, 1857 | | 100 00 |
| " " Thomas L. Hadaway, given to Thomas Eubanks and found in the possession of Alfred Eubanks, dec'd, & due 25th Dec'r, 1857 | | 110 00 |
| One on James D. Jackson, due 16th June, 1857 | | 28 50 |
| Negroes—Jerry | | 1,050 00 |
| Charles | | 250 00 |
| Lewis | | 900 00 |
| William | | 1,200 00 |
| Steve | | 1,000 00 |
| John | | 800 00 |
| Mary | | 750 00 |
| Jane | | 900 00 |
| Mariah & 2 children, Mac & Sam | | 1,300 00 |
| Bukey | | 400 00 |
| Catharine & 2 children, Nathan & Harriet | | 1,460 00 |
| Sarah | | 600 00 |
| Lizzie | | 450 00 |
| George | | 425 00 |
| Lilley & 3 children, Mahala, Matilda, & Henderson | | 1,600 00 |

| | |
|---|---|
| Berrey | 700 00 |
| Perrey | 600 00 |
| Buggy, harness, & umbrella | 150 00 |
| | 17,202 79 |

"STATE OF GEORGIA, *Morgan County:*

22 "We do hereby certify that the within inventory is just and appraisement of all and singular the goods and chattels of Alfred Eubanks, dec'd.

"October the 7th, 1857.

"JAMES S. REID.
"DANIEL G. GUSEN.
"JAMES B. HEAD.
"CASWELL J. ALLEN.

"I do certify that the above-named appraisers were duly sworn to perform their duty as such according to law.

"October the 7th, 1857.

"WM. WOODS, *J. P.*

"Returned by Francis A. Banks, administrator, the 29th October, 1857.

"F. W. ARNOLD, *Ordinary.*

"Examined and approved at November, 1857.

"F. W. ARNOLD, *Ordinary.*

"Recorded the 1st December, 1857.

"F. W. ARNOLD, *Ordinary.*

"*List of the sale of the perishable property of the estate of Alfred Eubanks, dec'd, due 25th Dec'r*, 1858.

| | | |
|---|---|---|
| James S. Reid, 2 ox yokes | | 10 |
| " " 2 large shovels | | 1 80 |
| " " 2 cradles | | 4 50 |
| " " 2 new spades | | 2 15 |
| " " 1 red cow & calf | | 27 00 |
| " " 1 shoe bench | | 35 |
| John F. Johnson, 2 plow stocks, 70; 1 lot hames, 10 | | 80 |
| " " 3 axes, 10; 1 lot gin fixtures, 25 | | 35 |
| 23 John F. Johnson, 6 plows, 95; 3 plows, 1 00 | | 1 95 |
| " " 1 lot sundries | | 65 |
| " " 1 table, 1 70; 1 lot sundries, 40 | | 2 10 |
| " " 1 box curry combs | | 30 |
| " " 4 bushels potatoes | | 1 00 |
| " " 2 boxes, 25; 1 saw, 4 00 | | 4 25 |
| James Cockram, 1 lot old hoes, 1 30; 2 pr. ducks, 1 00 | | 2 30 |
| Henderson Taylor, 3 plow stocks | | 75 |
| " " 2 " " | | 95 |
| " " 3 do. do. | | 1 55 |
| " " 3 setts plow gear | | 75 |
| " " 1 lot old hoes | | 25 |
| " " 1 grindstone | | 1 25 |
| " " 1 lot smith tools | | 4 25 |

| | | |
|---|---|---|
| Henderson Taylor, 5 old plows | | 2 10 |
| " " 1 " cart | | 5 25 |
| " " 1 shot-gun | | 3 50 |
| " " 2 jugs | | 60 |
| " " 1 large kettle | | 11 25 |
| " " 1 cow, (one horn) | | 3 25 |
| " " 100 bushels cotton seed | | 5 50 |
| " " 1 slate | | 10 |
| M. A. Pharr, 1 lot chains | | 1 80 |
| " " 1 red heifer | | 18 50 |
| " " 1 steer | | 25 00 |
| " " 1 cotton gin | | 5 00 |
| J. M. Stillwell, 2 plow gear, 70; old irons, 40 | | 1 10 |
| " " 1 lot old irons, 50; 1 basket do., 50 | | 1 00 |
| " " 6 plows | | 1 20 |
| 24 " " sundries | | 50 |
| " " 1 old reel | | 10 |
| " " 5 bee gums | | 75 |
| James B. Head, 1 lot crockery & knives | | 1 10 |
| " " 1 " glassware | | 1 10 |
| " " 6 chairs | | 1 10 |
| C. J. Allen, 1 water bucket & churn | | 1 30 |
| " " 5 barrels | | 13 40 |
| " " 5 do. | | 13 45 |
| 5 do. | | 13 40 |
| 5 do. | | 13 30 |
| Thomas Eubanks, 1 lot bottles | | 20 |
| 1 bedstead & bedding | | 13 50 |
| 1 Bowie knife | | 75 |
| 1 glass, 25; 1 old trunk, 5 | | 30 |
| Daniel S. Gunn, 1 pr. shears, & bagging | | 1 00 |
| 100 bushels cotton seed | | 6 50 |
| 100 do., 6 50; 100 do., 6 50 | | 13 00 |
| 215 do., 13 97; lot do., damaged, 21 00 | | 34 97 |
| running geer to gin | | 10 00 |
| William T. Hollinsworth, andirons, tongs, & stew-pan | | 35 |
| 5 barrels corn | | 14 00 |
| 1 stack fodder | | 5 00 |
| James S. Reid, 1 pr. sheep shears | | 20 |
| 1 " tooth twisters | | 62 |
| Reuben Allman, part bag shot & pistol | | 1 00 |
| 5 barrels corn | | 13 75 |
| 5 do. do | | 13 50 |
| 25 Oscar Peeples, 1 small-bore pistol & beegum | | 2 75 |
| Benjamin Harris, tin box & contents | | 25 |
| H. B. Head, 1 sorrel mare | | 41 00 |
| Richard Campbell, 5 barrels corn | | 13 75 |
| 5 do. do | | 13 50 |
| 6½ do. do., refused | | 11 37 |
| Seaborn Few, 30 barrels corn | | 81 00 |
| 5 do. do | | 13 45 |
| 10 do. do | | 26 60 |
| 50 do. do | | 132 50 |
| R. C. Stewart, 5 barrels corn, 13 25; 5 do., 13 25 | | 26 50 |
| 1 part stack fodder | | 1 50 |
| Mrs. N. M. Brawner, 5 pork hogs, No. 1 | | 62 25 |

| | | |
|---|---|---|
| | 5 do. do., " 2 | 47 00 |
| B. M. Peeples, | 5 do. do., " 3 | 34 00 |
| | 5 do. do., " 4 | 33 00 |
| | 5 do. do., " 5 | 30 00 |
| | 1 sow, pigs, & yearlings | 8 00 |
| | 100 bushels cotton seed | 7 00 |
| R. B. Penick, 5 pork hogs, 26 00; gin band, 2 31 | | 28 31 |
| John C. Moore, 7 pork hogs | | 22 10 |
| I. P. Stafford, 1 shoat | | 1 40 |
| 2 bushels cotton seed | | 13 00 |
| 2 lots jugs | | 55 |
| 1 demijohn | | 15 |
| 2 kegs & boxes | | 10 |
| 1 lounge | | 5 00 |
| 1 lot boxes & kegs | | 3 10 |
| 1 cow | | 2 50 |
| 26 T. P. Stafford, 1 pr. steers | | 28 00 |
| 2 young bulls | | 5 00 |
| 1 lot shucks | | 10 50 |
| 1 pen do., 6 50; 1 do., 7 50 | | 14 00 |
| 8 goats | | 3 68 |
| Robert Doughless, 1 cow & calf | | 11 50 |
| 1 heifer | | 5 25 |
| R. Allman, 2 stacks fodder | | 9 25 |
| 1 hatchet | | 75 |
| J. R. Kendrick, 2 stacks fodder | | 8 75 |
| 1 do. oats | | 8 00 |
| G. M. T. Perryman, 1 mule | | 135 00 |
| A. Stoddard, 1 grey mare | | 38 50 |
| Mrs. A. Vincent, 1 mule | | 59 50 |
| R. Lemmond, 1 grey mare | | 26 00 |
| J. W. Larkin, 1 brown mare | | 56 00 |
| H. J. Ogilby, 4 augers | | 63 |
| 2 shovels | | 1 40 |
| 1 crow-bar | | 75 |
| 105 lbs. iron | | 3 68 |
| 3 cradles | | 5 25 |
| 1 corn-sheller | | 3 25 |
| 4 plows, 2 00; 4 do., 2 20; 2 sows, 21 50 | | 25 70 |
| 1 cow & calf, 9 50; 1 do., 15 50; 1 do., 11 00 | | 36 00 |
| 1 do 10 25; 1 do., 27 00; 1 bull, 16 00 | | 52 25 |
| 1 mule | | 156 00 |
| 1 colt | | 52 50 |
| James B. Head, 1 +-cut saw & adze | | 2 90 |
| 27 P. R. Thomason, 1 raw hide, 50; 50 bush. wheat, 40 00 | | 40 50 |
| 50 bushels wheat, *a* 84c | | 42 00 |
| Thomas Ambrom, 1 old 2-horse wagon | | 8 00 |
| M. G. Davis, 1 2-horse wagon, &c | | 70 00 |
| C. J. Allen, 12 lbs. leather | | 3 12 |
| 2 ps. do | | 50 |
| 1 stack fodder | | 4 00 |
| 1 do. do | | 4 00 |
| James M. Mann, 1 jug honey | | 3 40 |
| 1 partridge net | | 45 |
| 1 bedstead & bedding | | 21 00 |
| 1 lot books | | 50 |

| | |
|---|---|
| A. F. Bird, 1 old saddle | 2 30 |
| 1 mule | 77 00 |
| E. Patrick, 1 b'x medicine | 35 |
| 10 bushels wheat | 8 75 |
| 10 do. do | 8 50 |
| 1 pen shucks | 7 25 |
| William Neal, 1 bell | 1 00 |
| Thomas L. Hadaway, 56½ y'ds osnaburgs | 7 06 |
| 1 pr. steelyards & frow | 75 |
| F. P. Herren, 1 silver watch | 3 40 |
| E. Perryman, 20 pigs, 17 00; 3 sows, 15 00 | 32 00 |
| 3 sows, 10 00; 10 shoats, 30 00; 6 do., 10 00 | 50 00 |

"*Sale of land and negroes, &c., belonging to the estate of Alfred Eubanks, dec'd, on the 2nd day of February, A. D.* 1858:

| | |
|---|---|
| Benjamin Harris, 60 acres of land, more or less, known as the Fitzpatrick place | 235 00 |
| 28 Thomas P. Stafford, 369 acres of land, more or less, known as the Harris place | 4,200 00 |
| W. A. Hammond, negro man Charles | 210 00 |
| do. do. Lewis | 900 00 |
| Thomas R. Ward, negro man Jerry & wife Catherine, and children, Nathan & Harriet | 2,100 00 |
| Mary, 665 00; Jane, 750 00; Bill, 1,320 00; | 2,735 00 |
| Steven, 1,225 00; John, 1,160 00; George, 495 00 | 2,880 00 |
| Girl Lizza | 652 00 |
| Henry Gorman, negro woman Beckey | 360 00 |
| James S. Reid, negro woman Mariah, and her 2 children, Mac & Sam | 1,510 00 |
| C. J. Allen, negro woman Sill and her three children, Mahala, Matilda, & Hudson | 1,981 00 |
| Ambrose Eubanks, negro boy Berrey | 785 00 |
| " " Perry | 556 00 |
| Thomas Eubanks, 1 buggy & harness | 130 00 |
| | $21,386 14 |

"GEORGIA, *Morgan County:*

"Personally appeared Francis A. Banks, administrator upon the estate of Alfred Eubanks, dec'd, who, being duly sworn, saith that the above and foregoing is a just and true return of the sale of the estate of said deceased, to the best of his knowledge and belief.

"F. A. BANKS.

"Sworn to and subscribed before me this 22nd April, 1858.

"F. W. ARNOLD, *Ordinary.*

29 "Examined and approved at May term, 1858.

"F. W. ARNOLD, *Ordinary.*

"Recorded the 6th May, 1858.

"F. W. ARNOLD, *Ordinary.*"

"*The estate of Alfred Eubanks, dec'd, to Francis A. Banks, adm'r.*

| | | Dr. | | |
|---|---|---|---|---|
| August | 31, 1857. | To cash paid temporary letters, &c | 1 | 5 00 |
| October | 5, " | " " F. W. Arnold, ordinary, for letters | 2 | 10 75 |
| Jan'y | 1, 1858. | " " paid P. R. Thomason acc't | 3 | 32 25 |
| " | " " | " " " Copeland Harris, &c | 4 | 31 84 |
| " | " " | " " taxes for the year 1857 | 5 | 20 54 |
| " | " " | " " W. L. Jett | 6 | 4 83 |
| " | " " | " " M. A. Wingfield, &c | 7 | 55 |
| " | 11, " | " " L. B. Robson & Co | 7 | 20 13 |
| " | 12, " | " " R. C. Stewart | 8 | 12 00 |
| Feb'y | 9, " | " " John C. Rees | 9 | 65 |
| " | 13, " | " " Alfred Shaw, coffin | 10 | 75 00 |
| April | 12, " | " " Sheppard & Fitzpatrick | 11 | 365 20 |
| " | " " | " " R. A. Prior | 12 | 17 00 |
| " | 13, " | " " notes to W. M. Burnett | 13 | 170 00 |
| " | 14, " | " " Vassen & Few, account No | 14 | 3 25 |
| " | 13, " | " " H. J. Ogilby | 15 | 13 00 |
| " | 12, " | " " R. Goldburg | 16 | 34 13 |
| " | 13, " | " " D. G. Gunn | 17 | 58 12 |
| " | 21, " | " " N. C. Gurncey | 18 | 21 15 |
| " | " " | " " J. M. Stillwell, funeral services | 19 | 20 00 |
| " | " " | " " Alfred Shaw | 20 | 12 00 |
| " | 12, " | " " F. W. Arnold, ordinary | 21 | 17 00 |
| " | 22, " | " " W. J. Hollinsworth | 22 | 42 50 |
| " | 20, " | To cash paid Oscar Peeples | 23 | 7 00 |
| 30 | 22, " | " " Jno. F. Johnson | 24 | 10 00 |
| Feb'y | 10, " | " " John R. Kendrick | 25 | 15 00 |
| April | 22, " | " commissions on 1,018 89 *a* 2½ per cent | | 25 47 |
| | | " do " 1,848 77 " " " | | 46 21 |
| | | " do " sale list, 21,386 14 " " | | 534 65 |
| | | | | $1, 625 22 |
| | | Contra. | | |
| April | 14, 1858. | By sale of 39 bales cotton, 16,807 lbs. to C. Campbell, *a* 11c | | 1, 848 77 |

"GEORGIA, *Morgan County:*

"Personally appeared Francis A. Banks, administrator upon the estate of Alfred Eubanks, dec'd, who, being duly sworn, saith that the above is a just and true return upon said estate, to the best of his knowledge and belief.

"FRANCIS A. BANKS.

"Sworn to and subscribed before me this 22nd April, 1858.

"F. W. ARNOLD, *Ordinary.*

"Examined and approved at May term, 1858.

"F. W. ARNOLD, *Ordinary.*

"Recorded the 7th May, 1858.

"F. W. ARNOLD, *Ordinary.*

"*The estate of Alfred Eubanks, dec'd, to Francis A. Banks, administrator.*

| | | Dr. | No. | |
|---|---|---|---|---|
| May | 1, 1858. | To cash paid A. Atkinson for monument | 1 | 200 00 |
| July | 8, " | " " " V. D. Gresham | 2 | 4 00 |
| 31 July | 8, 1858. | To am't paid Poullain, Jennings & Co | 3 | 5 10 |
| " | " " | " " " J. & W. S. Jones, printers | 4 | 12 37 |
| Sept. | 16, " | " " " J. C. Rees, cost | 5 | 20 50 |
| April | 10, 1859. | " " " N. G. & A. G. Foster, attorney's fee, for hire renewed in suit for Sarah, together with costs | 6 | 48 94 |
| " | 11, " | To cash paid A. Reese, attorney's fee | 7 | 50 00 |
| " | 11, " | " " " Fannire & Billups " " | 8 | 50 00 |
| " | " " | " " " do, " " | 9 | 50 00 |
| Jan'y | 8, " | " " " Thomas Eubanks, overseer | 10 | 70 60 |
| March | 23, " | " " " A. J. Hill acc't | 11 | 5 00 |
| Jan'y | 19, " | " " " James S. Reid | 12 | 12 90 |
| " | " " | " " " taxes for 1858 | 13 | 98 11 |
| Jan'y | 1, " | " " " Thomas G. Hester | 14 | 10 00 |
| April | " | " " " F. W. Arnold, ordinary | 15 | 13 82 |
| " | " | " error in sale of corn to Seaborn Few, it being 43 barrels short of the quantity, sold at 2 65 | | 113 95 |
| | " | Commissions on 591 34 *a* 2½ | | 14 78 |
| | | | | 720 07 |

"GEORGIA, *Morgan County:*

"Personally appeared Francis A. Banks, administrator of Alfred Eubanks, dec'd, who, being duly sworn, saith that the within is a just and true return upon said estate since his last, to the best of his knowledge and belief.

"FRANCIS A. BANKS.

"Sworn to and subscribed before me, this 11th April, 1859.

"F. W. ARNOLD, *Ordinary.*

32 "GEORGIA, *Morgan County:*

"I, Fielding W. Arnold, ordinary, in and for said county, do certify that the writing upon the six pieces of paper here stitched together contains a true copy of all the returns of the actings and doings of said administrator, as appears on Record I, in the books of my office, and on file for record.

"Given under my hand and seal of office, this 14th day of April, 1859.

"F. W. ARNOLD, *Ordinary.*

33 "GEORGE EUBANKS, DAVID EUBANKS, James M. Hatch, & his wife, Sarah Hatch,
"*vs.*
"FRANCIS A. BANKS, ADM'R OF ALFRED Eubanks & Ambrose Eubanks et al.
} Bill for discovery, relief, & distribution, in Morgan superior court.

"The several answer of Ambrose Eubanks to the above bill of complaint.

"This defendant, after making the usual reservations, &c., for answer to the above bill of complaint, or to so much and such parts thereof as this defendant is advised is or are material for him to make answer unto, answering, says:

"Alfred Eubanks, the intestate, late of the county of Morgan and State of Georgia, was a son of Thomas Eubanks, dec'd, late of the county of Chatham and State of North Carolina.

"He further states that said Thomas Eubanks had children borne to him by two mothers; that he had by his first wife nine children, to wit: Amos Eubanks, Asa Eubanks, Alfred Eubanks, the intestate, Ambrose Eubanks, Cynthia Eubanks, John Eubanks, Polly Eubanks,
34 Carney Eubanks, and Rachel Eubanks, and of these children the following-named ones, to wit, Amos, John, and Carney, departed this life before the death of Alfred, leaving no wife or child living at the time of their deaths.

"States further that Cynthia Eubanks married Edward H. Ward, and is now living with her husband in Greene County, Alabama. Polly Eubanks married Thomas Bynum, & died some ten or twelve years since, leaving seven children living at the time of her death, all of whom were in life at the time of the death of said Alfred Eubanks, & are named Luke, Cynthia, John, Elmira, Caroline, (all these being of age,) Ambrose, & Gray, the two last being minors, under the age of twenty-one & having Turner Bynum, of the county of Chatham, North Carolina, for their guardian. And this defendant will here state that one of the children of said Polly has departed this life since the death of said Alfred Eubanks, to wit, John Bynum, leaving no wife or child living at the time of his death.

"This defendant further states that Asa Eubanks departed this

life some ten years before said Alfred, leaving seven children, all of whom were living at the death of the said Alfred, and are still in
35 life, so far as this defendant is advised and believes, to wit, Asa, Sidney, Louisa, wife of Goodwin, Thomas, (all of age,) Charles, Mary, & Carney, minors under the age of twenty-one, and who have for their guardian Turner Bynum, of the county of Chatham & State of North Carolina, where the minor children of the said Asa and said Polly all reside.

"He further states that Rachel Eubanks married Henry Gorman, and with her husband is still alive, living in the city of Raleigh, & State of North Carolina. Thus leaving the estate of the said Alfred, under the statute of distributions of the State of Georgia, to be divided into five shares among the aforesaid persons living at the time of his death, if he died leaving no wife or child living at the time of his death, and no other brothers or sisters living at the time of [his death (?)] entitled & who have not relinquished their interest in said estate to the above-named distributors.

"This defendant further answering, insists that complainants are not entitled to receive any portion of the estate of the said Alfred Eubanks, for the reason that they are not under the statutes & laws of North Carolina, where said complainants were born & begotten, & where the said Thomas Eubanks always lived & where his first and second
36 marriage (if, indeed, any second marriage ever was had) were had, are not legitimate half brothers & sisters of said Alfred Eubanks, and states the facts in relation thereto to be as follows, viz:

"Thomas Eubanks' first wife, & mother of Alfred Eubanks, was named Polly Jones before her marriage, and died in the year (1824) eighteen hundred and twenty-four or twenty-five. That he is informed and believes that the maiden name of the mother of complainants was Betsey Yarborough; that said Betsey was lawfully married to one William Wilson, in the county of Cumberland & State of North Carolina, in the year (1822) eighteen hundred & twenty-two; that they lived together some year or more as man and wife, & then separated, said Wilson remaining in the same neighborhood with said Betsey until the year eighteen hundred & twenty-five. That said Wilson then left the neighborhood & was gone some four or five years, (report says into Robertson County, of North Carolina, adjacent to said county of Cumberland,) when he returned to the county of Cumberland, and after remaining there a while removed to the county of Chatham aforesaid, and lived in the
37 same neighborhood in which the said Thomas Eubanks & said Betsey were living, as hereinafter stated, & in which said neighborhood the said Wilson resided some nine or ten years, a part of the time within one mile of the said Thomas and Betsey.

"And this defendant further states that he is informed and believes that said Thomas Eubanks, at the age of seventy years, took up with said Betsey as a wife in the county of Chatham & State of North Carolina, in the year (1828) eighteen hundred & twenty-eight, said Betsey being comparatively a young person, not exceeding twenty-four or twenty-five years of age.

"This defendant cannot state from information or from his own knowledge whether or not said Thomas & said Betsey were ever married according to the forms of law, but knows that they lived together as man and wife from the year 1828 until his death, which took place some eighteen or twenty years since.

"This defendant, further answering, says that he has no doubt but that the said complainants, George, David, and Mary or Sarah were born of

said Betsey during the time said Betsey & said Thomas lived together as man and wife, nor has he any doubt about the said Mary (intended, he presumes, for Sarah) being the wife of said James M. Hatch.

38 "This defendant again submits to this honorable court the question of the legitimacy of said complainants, & insists here again that, for the reasons above stated, said complainants are not under and by virtue of the statutes & laws of the State of North Carolina legitimate half brothers & sister of said Alfred Eubanks, deceased, and therefore are not, under the statute of distributions of the State of Georgia, entitled to receive any portion of the estate left by the said Alfred, & insists that they be held to strict proof of their being legitimate half brothers & sister of said Alfred.

"This defendant, further answering, says that if this honorable court shall, upon hearing the evidence touching the legitimacy of said complainants, adjudge them to be legitimate half brothers & sister of said Alfred, deceased, be this defendant for himself & his kinsmen descendants of the said Thomas Eubanks, by his first wife, Polly, who was the mother of the said Alfred, dec'd, insists still that complainants are entitled to receive no part of the estate of said Alfred from said administrator, and that the shares to which they might respectively have been entitled ought to be paid to the other distributors of said estate

39 for the reason that said complainants, with a full knowledge of the facts, and, as this defendant is informed & believes, after having obtained the best legal advice thereon, for a valuable consideration sold, released, and quit-claimed all their right, title, & interest in & to any and all of the estate of the said Alfred Eubanks, deceased, to the heirs and legatees of the late Alfred Eubanks, of Georgia, their heirs & assigns, meaning by the heirs and legatees of the late Alfred, the children of the said Thomas by the said Polly, & descendants of such children, which said sale, release, & relinquishment is evidenced by writing under the hands and seals of the said complainants, the said James M. Hatch representing himself & wife, & bears date the 3d day of November, 1857, and is witnessed by W. Hanks. A copy of which said instrument in writing is hereto attached (marked "Exhibit A") and made a part of this answer, & to which leave of reference is asked as often as may become necessary, &c.

"This defendant will now proceed to give, as far as he can, a history of the execution of said instrument in writing, praying that whatever may be contained in said history responsive to the charges in said bill be taken as his answer to said charges:

"This defendant states that shortly after he had notice of the

40 death of his brother, Alfred Eubanks, he thinks the day after, it being the latter part of August, 1857, he came on to Georgia, and was absent some ten days, when he returned to his home in Chatham County, where the complainants, except James M. Hatch, lived & still live. A few days after his return, say four or five, he met with two of complainants, to wit, George & David Eubanks, at Hanks' Chapel, in Chatham County, North Carolina, upon which occassion he stated, in reply to an interrogatory put by said David, that Alfred Eubanks left 24 negroes and a pretty good plantation, with stock, &c. Said David, at same time, asked this defendant if he & his brother George & sister would not get a part of said estate; to which question this defendant replied 'he thought it doubtful, for he, this defendant, had understood that the husband of complainant's mother, William Wilson, was still alive, and that he, this defendant, would go in a few days and see about it. This is all the conversation that occurred at the chapel aforesaid.

A few days after this interview this defendant did go from home for the purpose of ascertaining whether said Wilson was alive and
41 to obtain all the information in his power touching the marriage of Wilson & the said Betsey, and her living with said Thomas Eubanks. States that he did not see said William Wilson, but found his house in the county of Cumberland, he being away at the time, engaged in boating on Cape Fear River. This defendant was absent on this trip some four days. Some four days after the return of this defendant to his home he was asked by the mother of complainants, in the absence of George & David Eubanks, if her children would get no part of Alfred's estate. To which defendant replied he did not think they could, if William Wilson, her first husband, was living at the time of her intermarriage with Thomas Eubanks, about which she knew more than anybody else. In this conversation said defendant told her there were magistrates & lawyers not far off, and after getting advice upon the subject he, this defendant, would, if the other parties in interest would consent, pay them, the complainants, one hundred dollars each for all claim of interest they might have in said estate; they to give him time to hear from the other parties in interest. This defendant immediately caused letters to be written to parties in interest of age.
42 This defendant states that some ten or more days after this conversation two of complainants, to wit, James M. Hatch and George Eubanks, came to his, this defendant's, house late at night and proposed to take the hundred dollars. This defendant told them he could not make the arrangement unless all them were present to release their interests in said estate, & that the writing must be properly drawn up and executed. Upon this occasion this defendant again advised them to consult a lawyer, & asked them if they had done so, to which James M. Hatch, in presence of said George, replied they had been and consulted Samuel F. Phillips, of Chapel Hill, and that Phillips had told them he thought they stood a pretty good chance. Some time after this, can't say how many days, said James M. Hatch called at defendant's house for this defendant, as he said, to go up to Pittsboro' with him to consumate the arrangement about the hundred dollars & the release of interest before referred to, stating that said David & George Eubanks had gone over to Pittsboro for that purpose. This defendant went with said Hatch, and upon arriving in town found David & George
43 Eubanks there. This defendant will here state that a few days before this interview he received, through a firm in Cumberland County, a certificate signed and sworn to by William Wilson, & properly certified by a magistrate, and presumes it is the same referred (to) in complainants' bill, (a copy of which is hereto attached, marked 'B,') and which this defendant prays may be taken as a part of this, his answer, with leave of reference thereto as often as may be necessary. Which sworn certificate was shown to complainants when they so met as aforesaid in Pittsboro. This defendant announced himself ready to consumate said arrangement. The complainants seemed tardy in coming up to the agreement, and as complainant (?) is informed and believes went in search of and obtained further legal advice. Late in the evening of that day, just as this defendant was going for his horse to return to his home, all three of complainants came to defendant and seemed to be anxious & proposed to consumate said arrangement, to which this defendant said to them they were too late, that they had bothered him about it often enough, & now they could sue & get all they could, & thus left them & went to his home. After this defendant arrived
44 at home from Pittsboro, two of the complainants, to wit, James

M. Hatch & George Eubanks, followed him home the same night and insisted upon consumating said arrangement. This defendant finally agreed to go back to Pittsboro the next morning, & did so. When the parties met thus the second day in Pittsboro, the instrument in writing, a copy of which is hereto attached, marked B, already referred to, was duly executed by complainants and delivered to this defendant on the same day, to wit, the 3d day of November, 1857; paid said James M. Hatch ninety-three dollars, & on the 31st Dec'r, 1857, paid him the balance of the one hundred dollars. That this defendant at same time, in consumation of said sale & relinquishment, paid George Eubanks & David Eubanks the sum of ten dollars each, and gave his promissory notes for the sum of ninety dollars to each of them. States that George Eubanks traded the said ninety dollar note given to him to Joseph Bell, to whom this defendant has since paid the money. The other ninety dollar note given to said David Eubanks, the defendant says he has not been able to find it, so as to pay it off. States that he is informed
45 and believes it has been traded off by said David, and that this defendant has always been ready & willing to pay off said note whenever he can find out whose hands it is in.

"This defendant, further answering, says, that after the execution of said instrument in writing and promissory notes aforesaid on the 3d day of November, 1857, said James M. Hatch, in a few moments after the completion of the transaction, said to this defendant in the way of boast, 'I (meaning said Hatch) must acknowledge that I told you a lie that night I came to your house. I told you that Lawyer Phillips said we stood a very good chance, whereas Phillips told me he would not give me a pocket-knife for our chances as heirs of Alfred Eubanks.'

"This defendant, for further answer to the particular statements & charges in complainants bill contained, says, that two of complainants, to wit, James M. Hatch & George Eubanks, are men of fair education, intelligence, and business capacity; that David Eubanks is about such a person in point of education as this defendant, who unfortunately cannot read or write.

"This defendant denies telling complainants that they were not
46 entitled to any part of said estate, but did give them his opinion, and did advise them to obtain legal advice, as hereinbefore stated. Did not state to them that they were illegitimate, but stated to them it was the opinion of some people. Never spoke of the certificate to them, but showed it to them, as before stated. Never promised or paid a hundred dollars as a donation, but as a purchase of their claim of interest. Has no recollection of ever saying that the paper, to wit, the relinquishment, was worth five thousand dollars to him, & don't think he could ever have made such a speech, for the reason it could not be true, all the other legitimate distributees being equally interested with this defendant. This defendant denies most positively that said relinquishment was fraudulently obtained from complainants, or that he, on the occasion of the execution of the same, made representations that were false in reference to the certificate referred to, or any other matter connected with the transaction, the estate, or the complainants or any one else.

"This defendant cannot answer as to whether Thomas Eubanks was not the father of complainants, further than that he has already
47 answered. He believes that Sarah Eubanks, called Mary in bill, intermarried with James M. Hatch. Cannot answer as to the relationship of Alfred Eubanks deceased to complainants further than already answered. Admits that Thomas Eubanks departed this life

before said Alfred; that said Alfred departed this life in the year 1857, leaving no widow or child living. Is informed and believes that the estate of the said Alfred is worth some twenty thousand dollars.

"This defendant again denies that has interfered to prevent complainants from getting any interest in said estate, and states that the great object had in view by him in making said arrangement was to save the exposure of his deceased father, and prevent a family lawsuit.

"This defendant, further answering, says, he has hereinbefore set forth the names of all the persons standing in the relation of heirs-at-law to the deceased, and deems it unnecessary again to repeat them in answering the interrogatory part of complainants' bill.

"This defendant having fully answered, submits that said estate
48 is subject to be divided into five shares only, and among the persons set forth in this answer; but whatever it be adjudged to be divisible into, into five parts only or into eight parts, including the complainants as distributees, this defendant, for himself & the other distributees, prays that such decree may be rendered upon this bill upon the final hearing as will finally distribute said estate among the persons respectively entitled to same.

"And this defendant will ever pray, &c., and asks to be discharged with his reasonable costs, &c.

"AUGUSTUS REESE,
"*Sol. pro defendant, Ambrose Eubanks.*

"STATE OF GEORGIA, *Morgan County:*

"In person before me comes Ambrose Eubanks, who, being duly sworn, says, that what is contained in this, his foregoing answer, so far as concerns his own act & deed, is true of his own knowledge, and that what relates to the act or deed of any other persons he believes to be true.

"AMBROSE his + mark. EUBANKS.

"Sworn to and subscribed before me this 8th March, 1859.
"W. WOORLY, *J. P.*

49 "EXHIBIT A.

"*Copy.*

"We and each of us bind ourselves, our heirs, administrators, and assigns to and with the heirs and legatees of the late Alfred Eubanks, of Georgia, and their heirs and assigns to release, and by these presents do release and quit claim, all right, title, and interest in and to any and all of the estate of the said Alfred Eubanks, deceased, upon the condition that the said heirs of the said Eubanks pay to us, each, the sum of one hundred dollars.

"In witness whereof we have hereunto set our hands and seals this 3d day of November, 1857.

"JAMES M. HATCH. [SEAL.]
"GEORGE EUBANKS. [SEAL.]
"DAVID my + mark. EUBANKS. [SEAL.]

"Witness: W. HANKS.

"With certificates of R. C. Cotten, C. C. C., & Henry A. Lindon, J. P., attached.

"EXHIBIT B.

"*Copy.*

"STATE OF NORTH CAROLINA, *Cumberland County:*

"I, William Wilson, of the county and State aforesaid, do hereby state, on oath, that about the year 1822 I intermarried with one
50 Betsey Yarborough, in the County of Cumberland and State of North Carolina, and lived with her about one year, and left the State of N. Carolina and went to Tennessee, and in some short time after I left I was informed and believe that she intermarried with one Thomas Eubanks.

"WILLIAM his + mark. WILSON.

"William Wilson appeared before me, T. S. Luttutoh, a justice of the peace for Cumberland County, and made oath, in due form of law, that the above statement made by him was just and true.

"Sworn to and subscribed before me the 9th day October, 1857.

"Test: "F. S. LUTTUTOH, *J. P.*

"With certificate and seal of J. T. Warden, clerk, attached.

51 "GEORGE EUBANKS, DAVID EUBANKS, William Hatch, wife, & others *vs.* "FRANCIS A. BANKS & AMBROSE EUBANKS. } Bill, &c.—March term, 1859.

"The defendants in this case not having answered or demurred at this term of the court, ordered that they answer within thirty days from the adjournment of this court.

"GEORGE EUBANKS, DAVID EUBANKS, JAMES M. Hatch, & his wife, Sarah, "*vs.* "FRANCIS A. BANKS, ADM'R OF ALFRED EUbanks, dec'd, & Ambrose Eubanks. } In equity—March term, 1860.

"All parties consenting, it is ordered by the court that Edward H. Ward & his wife Cynthia, Henry Gorman & his wife Rachel, Asa Eubanks, Sidney Eubanks, Goodwin & his wife Louisa, Thomas Eubanks, & Mary Eubanks, & Carrie Eubanks, by their guardian, Bynum, children of Asa Eubanks, dec'd, Luke Bynum, Cynthia Bynum, Elmira Bynum, Caroline Bynum, & Ambrose Bynum, & Gody Bynum, by their guardian, Turner Bynum, the children of Polly Bynum, dec'd, be made parties defendants to said bill.

"GEORGE EUBANKS, DAVID EUBANKS, et al. "*vs.* "FRANCIS A. BANKS, ADM'R ALFRED EUbanks, dec'd. } March term, 1860.

"We, the jury, find and decree that there is in the hands of Francis A. Banks, as adm'r of the estate of Alfred Eubanks, dec'd, the sum of twenty-three thousand four hundred & forty-two dollars & nineteen cents. That out of that amount he be allowed five hundred dollars for lawyers' fees in the case, & the further sum of two hundred dollars attorney's fees in the general management of the estate, & the further

sum of sixty dollars & eighty-five cents for costs of court included in this case, leaving the sum of twenty-two thousand six hundred and eighty-one & thirty-four cents subject to distribution.

"We further find & decree that of said sum of twenty-two thousand six hundred and eighty-one dollars & thirty-four cents, so left after the payment of said sum as aforesaid, the said Francis A. pay to the complainants David Eubanks, George Eubanks, & James M. Hatch, in right of his wife, Sarah, each the sum of two thousand seven hundred & nineteen dollars sixteen & one-half cents; that he pay to the defendants Ambrose Eubanks, Edward H. Ward, in right of his wife Cynthia, & Henry Gorman, in right of his wife Rachel, each the
53 sum of two thousand eight hundred & thirty-five dollars sixteen & one-half cents. To the children of Asa Eubanks, dec'd, seven in number, the sum of twenty-eight hundred & thirty-five dollars sixteen & one-half cents, to wit: To Asa, the sum of four hundred & five dollars & two cents; to Sidney, the sum of four hundred & five dollars & two cents; to Goodwin, in right of his wife Louisa, the sum of four hundred & five dollars & two cents; to Thomas, the sum of four hundred & five dollars & two cents; to Turner Bynum, guard'n of Charles, Mary, & Camele, the sum of twelve hundred & fifteen dollars & six cents. To the children of Polly Bynum, six in number, the sum of two thousand eight hundred & thirty-five dollars sixteen & one-half cents, to wit: To Luke, the sum of four hundred & seventy-two dollars & fifty-two cents; to Cynthia, the sum of four hundred & seventy-two dollars & fifty-two cents; to Elmira, the sum of four hundred & seventy-two dollars & fifty-two cents; to Caroline, the sum of four hundred & seventy-two dollars & fifty-two cents. To Turner Bynum, guard'n of Ambrose & Gray, the sum of nine hundred & forty-five dollars & four cents. Also that he pay to Ambrose Eubanks the sum of three hundred & forty-nine dollars, which sum has been deducted from the shares of David Eubanks, George Eubanks, James M.
54 Hatch, to be paid to Ambrose Eubanks, to reimburse him for three hundred dollars paid to them for the transfer set up in his answer, together with interest on the same.

"& we further find that the clerk issue execution to each of said parties for the respective sums found for them, upon their application for the same after four days from the adjournment of this court.

"SAMUEL PENNINGTON, *Foreman.*

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| "GEORGE EUBANKS, DAVID EUBANKS, JAMES M. HATCH, & his wife, SARAH, "*vs.* "FRANCIS A. BANKS, ADM'R, & AMBROSE EUBANKS, & others. | Verdict for the compl'ts, &c.—March term, 1860. |

"The defendants, Ambrose Eubanks, Edward H. Ward, in right of his wife, Henry Gorman, in right of his wife, Asa Eubanks, Sidney Eubanks, Blacke Goodwin, in right of his wife, Thomas Eubanks, Turner Bynum, guard'n of Charles, Mary, & Carrie Eubanks, Luke Bynum, Cynthia Bynum, Elmyra Bynum, Caroline Bynum, Turner Bynum, guard'n of Ambrose & Gray Bynum, being dissatisfied with the verdict of the jury rendered in the above case, & upon the payment of all cost, demanded an appeal, and brings Augustus Reese and Isham S. Fannin and tenders them as their securities, &
55 they, the said defendants above named, & the said securities, acknowledge themselves jointly & severally bound to George

Eubanks, David Eubanks, James M. Hatch, & his wife, Sarah, for the payment of the eventual condemnation money in said cause.

"In testimony whereof they have hereunto set their hands & seals this 10th day of March, 1860.

"LUKE BYNUM, [L. S.]
"CYNTHIA BYNUM, [L. S.]
"ELMYRA BYNUM, [L. S.]
"CAROLINE BYNUM, [L. S.]
"TURNER BYNUM, [L. S.]
"*Guard'n for Ambrose & Gray Bynum.*
"AMBROSE EUBANKS, [L. S.]
"EDWARD EUBANKS, [L. S.]
"HENRY GORMAN, [L. S.]
"ASA EUBANKS, [L. S.]
"SIDNEY EUBANKS, [L. S.]
"THOMAS EUBANKS, [L. S.]
"TURNER BYNUM,
"*Guard'n of Charles, Mary, & Carrie Eubanks.*

"By their att'y at law, AUGUSTUS REESE.

"AUGUSTUS REESE, [SEAL.]
"I. S. FANNIN, [SEAL.]
"*Securities.*

"GEORGE EUBANKS, DAVID EUBANKS, JAMES M. Hatch, & his wife, Sarah,
"*vs.*
56 "T. A. BANKS, ADM'R, &c., & AMBROSE Eubanks, & others.
} Decree for the complainants.— March term, 1860.

"The defendants, Francis A. Banks, adm'r, being dissatisfied with the verdict of the jury rendered in the above cause, and having paid all cost & demanded an appeal, acknowledges himself bound to George Eubanks, David Eubanks, James M. Hatch, & his wife Sarah, for the payment of the eventual condemnation money in said cause.

"In testimony whereof he has hereunto set his hand & seal this 10th day of March, 1860.

FRANCIS A. BANKS,
"*Adm'r of Alfred Eubanks.*

"GEORGE EUBANKS, DAVID EUBANKS, JAMES M. Hatch, & his wife, Sarah,
"*vs.*
"FRANCIS A. BANKS, ADM'R OF ALFRED Eubanks, dec'd, Ambrose Eubanks, & others.
} In equity. March adj'd term, 1866.

"We, the jury, find and decree that there is in the hands of Francis A. Banks, as the administrator of the estate of Alfred Eubanks, dec'd, the sum of thirty thousand six hundred & sixty-eight dollars & fifty-eight cents. That out of that amount first there be allowed to
57 Isham S. Fannin, attorney of adm'r, seven hundred & fifty dollars for lawyer's fees on this case, & the further sum of two hundred dollars, attorney's fees on the general management of the estate; leaving, after the fees above stated are first paid, the sum of twenty-nine thousand seven hundred & eighteen dollars & fifty-eight cents subject to distribution.

"We further find and decree that of said sum of twenty-nine thousand seven hundred and eighteen dollars & fifty-eight cents, so left after the pay-

ment of said sums as aforesaid, that said Francis A. Banks pay to defendants, Ambrose Eubanks, Edward H. Ward in right of his wife Cynthia, & Henry Gorman in right of his wife Rachel, each the sum of five thousand nine hundred & forty-three dollars & seventy-one cents. To the children of Asa Eubanks, dec'd, seven in number, the sum of five thousand nine hundred & forty-three dollars & seventy-one cents, or to their legal representatives, each the one-seventh part of same amount. To the children of Polly Bynum, six in number, the sum of fifty-nine hundred & forty-three dollars & seventy-one cents, or the legal representatives of any of them, the one-sixth part of said sum, together with interest on the several amounts to the several parties from this date.

"And we further find that the clerk issue to each of said parties, execution for the respective sums decreed them upon their applica-
58 tion for the same, after four days from the adjournment of this court.

"We further decree that the said administrator be allowed as payment to the respective parties to be deducted from their recovery herein, the principal & interest of any note held by said administrator on either of said parties or their representatives, to the extent of the particular share of said parties in the nett fund, but no further.

"We further decree that the clerk issue executions against Francis A. Banks, administrator as aforesaid, for nine hundred & fifty dollars, in favor of Isham S. Fannin, for his fees aforesaid, he being the attorney for the administrator, & that complainants do pay costs of this suit.

"G. B. KNIGHT, *Foreman.*

"Special jury on above case: 1. Daniel Kilham. 2. A. J. Williams. 3. C. G. Harris. 4. Tho's J. Hillsman. 5. J. Stoddard. 6. G. B. Knight. 7. Wilson Malcolm. 8. A. Atkinson. 9. James Adair. 10. W. G. Ballard. 11. Milton West. 12. John P. Fears.

"March adjourned term, held May 23, 1866.

59 "GEORGE EUBANKS, DAVID EUBANKS, James M. Hatch, & his wife, Sarah, } Verdict.—March adj'd term, 1866.
"*vs.*
"FRANCIS A. BANKS, ADM'R OF ALFRED EUbanks, dec'd, Ambrose Eubanks, & others.

"Whereas a special jury at this term of the court found a verdict against the administrator aforesaid, setting forth the sum of thirty thousand six hundred & sixty-eight dollars & fifty-eight cents, was in the hands of the administrator, & that it was to be paid out as follows, to wit: First to Isham S. Fannin, attorney for the administrator, nine hundred and fifty dollars; & then to Ambrose Eubanks, H. Ward in right of his wife Cynthia, and Henry Gorman in right of his wife Rachel, each the sum of five thousand nine hundred & forty-three dollars & seventy-one cents; to the children of Asa Eubanks, dec'd, seven in number, the sum of five thousand nine hundred & forty-three dollars & seventy-one cents, or to their legal representatives, each the one-seventh part of said amount; & to the children of Polly Bynum, six in number, the sum of fifty-nine hundred & forty-three dollars & seventy-one cents, or the legal representatives of any one of them, the one-sixth part of
60 said sum, together with the interest on the several amounts to the several parties from this date, & further that the costs be

recovered of complainants, & that the administrator be allowed a credit against the said several parties to the amount of any notes he may hold against said parties mentioned in this decree, to the extent of the particular share of said parties in the debt fund and no further:

"Whereupon it is considered & adjudged by the court that Isham S. Fannin first recover of Francis A. Banks, administ'r of Alfred Eubanks, dec'd, nine hundred & fifty dollars principal, with interest from this date, & that Ambrose Eubanks, Edward H. Ward in right of his wife Cynthia, & Henry Gorman in right of his wife Rachael, each recover of Francis A. Banks, administrator of Alfred Eubanks, the sum of five thousand nine hundred and forty-three dollars & seventy-one cents. To the children of Asa Eubanks, dec'd, seven in number, the sum of five thousand nine hundred & forty-three dollars & seventy-one cents, or to their legal representatives, each the one-seventh part of said amount; & to the children of Polly Bynum, six in number, the sum of fifty-nine hundred & forty-three dollars & seventy-one cents, or
61 the legal representatives of any of them, the one-sixth part of said sum, & that the clerk do issue executions for said amounts in favor of said parties, & further that he issue executions for the costs incurred in this case.

"26th May, 1866.

"WILLIAM M. REESE,
"*Judge of Superior Court of Northern Circuit, presiding for Hon. A. Reese, J. S. C., O. C.*

"DAVID EUBANKS ET AL
"*vs.*
"FRANCIS A. BANKS, ADM'R OF ALFRED EUBANKS, et al. } Sept. term, 1866.

"It appearing to the court that the supreme court of the State of Georgia have reversed the decision & decree had in the above stated case at the last term of the court, & have sent up their remitter to that effect, ordered that the same be entered on the minutes of this court, & be made the judgement of the same, and that execution issue in favor of complainants for the sum of fifteen dollars & twenty-five cents for the costs in taking up said case, & that said case be reinstated on appeal docket & stand for trial.

62 "STATE OF GEORGIA':

"MILLEDGEVILLE, *Thursday, 28th June*, 1866.

"The honorable the supreme court met, pursuant to adjournment: Present, their honors, Joseph Henry Lumpkin, Dawson A. Walker, Iverson L. Harris, judges.

"DAVID EUBANKS ET AL., PL'FF'S IN ERROR,
"*vs.*
"FRANCIS A. BANKS, ADM'R, & OTHERS.

"This case came before the court upon a transcript of the record from the superior court of Morgan County, & after argument heard, it is considered & adjudged by the court that the judgement of the court below be reversed, this court holding that complainants, under the facts in this case, are entitled to recover as distributees of the estate of —— Eubanks, dec'd.

"Bill of costs: Carrying case to judgement, 6 00; ren'd opinion, 6 00; rem't, 2 00; sh'ff, 1 25. = $15 25.

"Supreme court of the State of Georgia, June term, 1866.

"I certify that the above is a true extract taken from the minutes, & that Messrs. Foster & Foster paid the above bill of cost.

63 "Given under my hand & seal of office.

"CHARLES W. DUBOSE. [SEAL.]

"GEORGE EUBANKS, DAVID EUBANKS, JAMES M. Hatch, & his wife, Sarah,
"*vs.*
"FRANCIS A. BANKS, ADMINISTRATOR, & AMBROSE Eubanks & others. } Bill &c.—Sept. term, 1866.

"We, the jury, find the release invalid, & that the defendant, Ambrose Eubanks, be refunded the amount paid pl'ffs, with interest.

"ABNER PARTEE, *Foreman.*

"The special jury in above case: 1. Abner Partee, foreman. 2. Drewry P. Evans. 3. Thomas J. Launis. 4. Pleasant Wilson. 5. William M. Day. 6. James McHugh. 7. Isham M. Allen, 8. William Shelton. 9. Willam L. Heigh. 10. Thomas C. Allen. 11. Charles M. Furlow. 12. John W. Martin.

"Sept. term, 1866.

"GEORGE EUBANKS & OTHERS
"*vs.*
"FRANCIS A. BANKS, ADM'R OF ALFRED EUbanks, dec'd, & others. } Bill of discovery, &c. Sept. term, 1866.

64 "We, the jury, find & decree that there is in the hands of Francis A. Banks, adm'r of Alfred Eubanks, dec'd, the sum of thirty-one thousand seven hundred & fifty-three dollars & fifty cents. That from that sum there first be allowed two hundred dollars costs expended in taking the case to the supreme court, & the cost of the case in the supreme court. And next there be allowed Isham S. Fannin, the attorney of the administrator, the sum of nine hundred & eighty-three dollars for his fees. Leaving the sum of thirty thousand five hundred & sixty dollars & fifty cents to be paid to the distributees of said estate, as follows, to wit: To Ambrose Eubanks, the sum of forty-three hundred & nine dollars; to Edward H. Ward, in right of his wife Cynthia, & Henry Gorman, in right of his wife Rachel, each the sum of thirty eight hundred and twenty dollars; to the children of Asa Eubanks, dec'd, seven in number, the sum of thirty-eight hundred and twenty dollars, or to their legal representatives, each the one-seventh part of said sum; to the children of Polly Bynum, six in number, the sum of thirty-eight hundred & twenty dollars, or the legal representative of any of them, the one-sixth part of said sum; to David Eubanks, George Eubanks, & James M. Hatch, in right of his wife Sallie, each the
65 sum of thirty-six hundred & fifty-seven dollars, together with interest on the several amounts to each of said parties from this date.

"We further find & decree that the clerk issue to each of said parties execution for the respective sums decreed them upon their application for the same, after four days from the adjournment of this court.

"We further decree the administ'r be allowed as payments to the respective parties, to be deducted from the recoveries herein, the principal & interest of any note held by said administ'r on either of said

parties, or their legal representative, to the extent of the particular shares of said parties in the nett fund.

"We further find & decree that out of any assets that belong to the estate of the said Alfred Eubanks that may be legally reached, there shall be a special lien in favor of those of said distributees who have received nothing from said administrator, & those who have received less sums than some others, until all have been made equal in the amounts recovered. That the shares of the respective parties as herein rewarded be subjected to rateable deduction for fees yet unpaid, for the collection of notes belonging to said administrator.

"Nov. 1st, 1866.

"1. ABNER PARTEE, *Foreman*,
"2. DRURY P. EVANS,
"3. G. L. THOMAS,
"4. PLEASANT WILSON,
"5. WILLIAM M. DAY,
"6. JAMES McHUGH,
"7. ISHAM M. ALLEN,
"8. WILLIAM SHELTON,
"9. WILLIAM L. HIGH,
"10. THOMAS C. ALLEN,
"11. CHARLES M. FURLOW,
"12. JOHN W. MARTIN,
"*Jury in above case.*

66 "GEORGE EUBANKS & OTHERS "*vs.* "FRANCIS A. BANKS, ADM'R OF ALFRED "Eubanks, & others. } Bill for discovery, &c., Sept. term, 1866. (Brought to March term, 1859.)

"There came on to be heard the above-stated case, at the Sept'r term, 1866, of Morgan superior court, William M. Reese, presiding, & a finding & decree was had by the jury.

"Wherefore it is ordered & adjudged by the court that there is in the hands of Francis A. Banks, adm'r of Alfred Eubanks, dec'd, the sum of thirty-one thousand seven hundred & forty-three dollars & fifty cents. That from that sum there first be allowed two hundred dollars costs, expended in taking the case to the Supreme Court & the costs incurred in this court. And there be allowed Isham S. Fannin, the attorney of the administ'r, the sum of nine hundred & eighty-three dollars, leaving the sum of thirty thousand five hundred & sixty dollars & fifty cents to be paid to the distributees of said estate as follows, to wit: To Ambrose Eubanks the sum of forty-three hundred & nine dollars; to Edward H. Ward, in right of his wife Cynthia, & to Henry Gorman, in right of his wife Rachel, each the sum of thirty-eight hundred
67 & twenty dollars; to the children of Asa Eubanks, dec'd, seven in number, the sum of thirty eight hundred & twenty dollars, or to their legal representative, each the one-seventh part of said sum; to the children of Polly Bynum, six in number, the sum of thirty-eight hundred & twenty dollars, or to the legal representative of any of them, each the one-sixth part of said sum; to David Eubanks, George Eubanks, James M. Hatch, in right of his wife Sallie, each the sum of thirty-six hundred & fifty-seven dollars, together with interest on the several amounts to each of said parties from this date. And that the clerk issue to each of said parties, or their attornies, execution for the respective sums adjudged them, upon application to him for the same, after four days from the adjournment of this court.

"It is further adjudged that the administ'r, Francis A. Banks, be allowed as payment to the respective parties, to be deducted from the amounts herein adjudged, the principal & interest of any note held by him on either of said parties, or their legal representatives, to the extent of the particular share of said party in the nett fund.

"It is further adjudged that out of any assets that belong to the estate of the said Alfred Eubanks, that may be legally reached, there be a special lean in favor of those of said distributees who have re-
68 ceived nothing from said administ'r, & those who have received less sums than some others, until all have been made equal in the amount received. That the shares of the respective parties as herein awarded be subjected to rateable deduction for fees yet unpaid, for the collection of notes belonging to said administrator.

"Nov. 1st, 1866.

"WILLIAM M. REESE,
"*Judge of Sup'r Court, Northern Circuit.*

"STATE OF GEORGIA, *Morgan County:*

"To all and singular the sheriffs of said State, greeting:

"We command you that of the goods and chattels, lands and tenements, of the estate of Alfred Eubanks, dec'd, & of the individual effects of Francis A. Banks, administrator of the said Alfred Eubanks, you cause to be made the sum of thirty-six hundred and fifty-seven dollars and cents, principal debt, and the further sum of dollars and cents interest, up to the first day of November, 1866; and also the further sum of dollars and fifty cents, for costs with interest on the principal sum from the first day of November, 1866, until paid, which David Eubanks, lately in the superior court of said county,
69 recovered against said Francis A. Banks, administrator of Alfred Eubanks, dec'd, for this principal, interest, and cost; and that you have the said several sums of money before the superior court on the first Monday in March next, to render to the said David Eubanks the principal, interest, and costs aforesaid; and have you then and there this writ.

"Witness the Honorable Augustus Reese, judge of said court, this 31st day of December, one thousand eight hundred and sixty-six.

"C. H. ANDREWS,
"*Dep. Clerk.*

"No property of the defendant, or of the estate of Alfred Eubanks, to be found upon which to levy this fi. fa.

"5th Feb'y, 1867.

"W. T. COLBERT,
"*Sh'ff of Morgan Co., Ga.*

"MORGAN COUNTY, *Georgia:*

"The within & the above is a true copy of fi. fa. & entries in this case.

"C. H. ANDREWS,
"*Dep. Clk S. C. Morgan Co.*

"STATE OF GEORGIA, *Morgan County:*

"To all and singular the sheriffs of said State, greeting:

"We command you that of the goods and chattels, lands and
70 tenements, of est. of Alfred Eubanks, dec'd, and of the individual effects of Francis A. Banks, administrator of Alfred Eubanks, you

cause to be made the sum of thirty-six hundred & fifty dollars and cents, principal debt, and the further sum of dollars and cents interest, up to the first day of November, 1866; and also the further sum of dollars and fifty cents, for costs, with interest on the principal sum from the first day of November, 1866, until paid, which James M. Hatch & his wife Sallie Hatch lately, in the superior court of said county, recovered against the said Francis A. Banks, administrator of the est. of Alfred Eubanks, dec'd, for their principal, interest, and cost; and that you have the said several sums of money before the superior court, on the first Monday in March next, to render to the said James M. Hatch & his wife Sallie Hatch, the principal, interest, and costs aforesaid; and have you then and there this writ.

"Witness the Honorable Augustus Reese, judge of said court, this thirty-first day of December, one thousand eight hundred & sixty-six.

"C. H. ANDREWS, *Dep. Clk.*

"No property of the defendant, or of the estate of Alfred Eu-
71 banks, to be found upon which to levy this fi. fa.

"5th Feb'y, 1867.

"W. T. COLBERT,
"*Sh'ff Morgan County.*

"GEORGIA, *Morgan Co.:*

"The within and above are true copies of fi. fa. & entries in this case.

"C. H. ANDREWS,
"*Dep. Clk S. C.*

"STATE OF GEORGIA, *Morgan County:*

To all and singular the sheriffs of said State, greeting:

"We command you that of the goods and chattels, lands and tenements, of estate of Alfred Eubanks, dec'd, and of the individual effects of Francis A. Banks, administrator of Alfred Eubanks, dec'd, you cause to be made the sum of thirty-six hundred & fifty dollars and cents, principal debt, and the further sum of dollars and cents, interest up to the first day of November, 1866; and also the further sum of dollars and fifty cents, for costs, with interest on the principal sum from the day of 186 , until paid, which George Eubanks lately in the superior court of said county recovered against the said Francis A. Banks, administrator of the est. of Alfred Eubanks, dec'd, for his principal, interest, and cost; and that you have the said several sums of money before the superior court on the first Monday in March next,
72 to render to the said George Eubanks, the principal, interest, and costs aforesaid; and have you then and there this writ.

"Witness the Honorable Augustus Reese, judge of said court, this thirty-first day of December, one thousand eight hundred and sixty-six.

"C. H. ANDREWS,
"*Dep. Clerk.*

"Served this fi. fa. upon one black horse, two bay mares, & two mules, 10 head of sheep, 26 head of hogs, 29 head of cattle, as the property of F. A. Banks. Property pointed out by def't.

"Jan'y 6th, 1867.

"W. T. COLBERT, *Sh'ff.*

"The above property sold this day, for the gross sum of eight hundred & thirty $\frac{40}{100}$ dol's. Am't after deducting two dollars levy fee;

five doll's advertising property; commissions for selling, ten dollars & thirty-eight cents; for keeping stock thirty days, cattle five cents pr. day; hogs & sheep, four cents pr. day; mules & horses, twenty-five cents pr. day, & the expense of getting them to place of sale, one hundred & thirty dollars; making all expenses together, one hundred and forty-seven $\frac{38}{100}$ dol's, which being deducted, leaves in my hands the nett sum of six hundred & eighty-three dollars & two cents to be applied to this fi. fa.

"Feb'y 5th, 1867.

"W. T. COLBERT, *Sh'ff.*"

73 "No property of the defendant or of the est. of Alfred Eubanks to be found upon which to levy this fi. fa.

"5th Feb'y, 1867.

"W. T. COLBERT, *Sh'ff.*

"GEORGIA, *Morgan County:*

"The within and above are true copies of fi. fa. & entries in this case.

"C. H. ANDREWS,
"*Dep. Clk S. C.*

"GEORGIA, *Morgan Co.:*

"I, Charles H. Andrews, deputy clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing eleven half-sheets contain a true, perfect, and complete copy of the record from the record books of my office, of the entire actings and doings had in said court in the case of David Eubanks, George Eubanks, & James M. Hatch, & his wife Sallie, vs. Francis A. Banks, administrator of Alfred Eubanks, dec'd, and others.

"Given under my hand and seal of office this 2nd day of March, A. D. 1868.

"C. H. ANDREWS,
"*Dep. Clk S. C. M. Co.*"

*Consent of counsel on the back of the record.*

We consent that the within record may be read in evidence in the case of Geo. B. Stovall, ord'y, use of David Eubanks, George Eubanks, James M. Hatch, & his wife Sallie Hatch, vs. Francis A. Banks, Hugh J. Ogilby & James S. Reed in the dist. court of the U. S. for the
74 northern dist. of Geo. without further or other authentication, this Sept. 12th, 1868. The right to object to the introduction of the record on any other grounds (than as to authentication) is reserved.

JNO. L. HOPKINS,
*Att'y for D'f't Reid.*

There was exhibited to the court, together with this record, the following agreement of counsel:

We agree that a replication in bar by estoppal be considered as filed in the within case, by consent, and all formalities waived, and said replication in estoppal is predicated upon the record from Morgan superior court, and covers the 2 & 3d pleas pleaded by def't, and all answers or objections touching the merits of said question considered as filed & ready for trial.

J. L. HOPKINS,
*Att'y for Def't.*

75 There was also exhibited to the court, together with these papers, an agreement of counsel in writing, as follows:

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| GEORGE EUBANKS, DAVID EUBANKS, GEORGE M. Hatch, & his wife, Salley, *vs.* FRANCIS A. BANKS, ADMINISTRATOR OF Alfred Eubanks, dec'd, Ambrose Eubanks, & others. | Bill for account, &c., had and disposed of in Morgan superior court. |

The following is a list of the interrogatories that were read as testimony in the above-stated case on the trial thereof, together with the answers of Francis A. Banks & Ambrose Eubanks, to wit:

On the part of complainants, Elizabeth Eubanks & Joseph Yarborough, (in one,) Matthew Yarborough, William Wilson, Ansley & Santug, (both in one,) Marcus F. Waddell, Lemuel Ellis, & Daniel Oslin, (both in one.)

On the part of respondents, George Wynne, Faucett & Brunt, (both in one,) Wesley Hanks, Henry H. Hatch, Oscar Harris, & B.
76 Lambert, (all in one,) John Eubanks, Henry Burgis, Zimri Riggsby, James Willson, Harriett Eubanks, William Bland, & Willis Poe, (all in one,) Robert G. Eubanks, & H. C. Horton, (both in one,) Samuel Phillips.

Record from the State of North Carolina bearing date 23d of August, 1860, at Raleigh, with the seal of the State attached.

Answers of F. A. Banks & Ambrose Eubanks.

It is agreed that the interrogatories that were read on the trial of the above-stated case in Morgan superior court, (the foregoing being a true list of the same, together with the original bill & answers of Francis A. Banks & Ambrose Eubanks, and the certified record from the State of North Carolina as far as *as* the same are legal or pertinent to the issue, be read as testimony on the trial of the case now pending in the district court of the U. States for the northern district of Georgia in favor of said complainants vs. Francis A. Banks, James S. Reid, and Hugh J. Ogilby.

FANNIN & BILLUPS,
*Pff'ts' Atty's.*
A. G. FOSTER,
*Att'y for Complainants.*

77 Council for defendant Reed objected to all and every part of said bill, answer, and the record following the same, in manner and in words as follows:

"I object to the introduction of this record for two reasons:

"First. There is a variance between the record and that described in the declaration, in this: the declaration describes a case in favor of these plaintiffs against F. A. Banks, in which a decree was rendered for dollars; the record tendered is a bill filed by William Hatch and others against said Banks and others, and the decree offered embraces several items other than the decree for the said sum of money.

"Second. The decree is not final. It contains the following, among other clauses: That the shares of the representatives as herein awarded be subject to rateable deduction for fees yet unpaid for collection of notes belonging to said administrator.

"The former objection can be cured by amendment, and I prefer that the judgement of the court shall rest upon the latter objection, as it goes to the merits of the record presented."

The court then heard argument of counsel on both sides, solely
78 upon the question of the finality of said decree, and thereupon decided that said decree was not final, and that, for that reason, it could not be read in evidence for any purpose in the case pending. And the court rejected said decree, together with the bill and answers preceding it. And plaintiffs, by their counsel, then and there excepted.

Plaintiffs next offered in evidence the separate answer of Francis A. Banks, adm'r, as hereinbefore copied, to which counsel for defendant Reid objected. The court sustained the objection, not only as to Reid, but as to all the defendants, and rejected said answer; and plaintiffs, by their counsel, then and there excepted.

Plaintiffs next offered in evidence the last verdict and decree from Morgan superior court, as hereinbefore copied, to which counsel for defendant Reid objected. The court sustained the objection, not only as to Reid, but as to all the defendants, and rejected the evidence. And plaintiffs, by their counsel, then and there excepted.

3. Plaintiffs then offered, and the court admitted in evidence, copies of the inventory and appraisement of the estate of Alfred Eubanks, deceased. Also, the list of the sale of the property of the estate of
79 said deceased. Also, two returns of Francis A. Banks as administrator of the estate of said deceased. Exact copies of said inventory and appraisement, of the list of sale, and of the returns, were attached as exhibits to the answer of Francis A. Banks, and the same are hereinbefore copied as part of said answer, to which reference is here made.

4. Plaintiffs next offered, and the court admitted in evidence, duly certified copies of three fi. fa's, together with the sheriff's entries thereon, to wit, David Eubanks vs. Francis A. Banks, adm'r, James M. Hatch and his wife, Sallie Hatch, vs. same, and George Eubanks vs. same; being the same which were embraced in, and formed part of, the record from the superior court of Morgan County, Georgia. Said fi. fa's and the sheriff's entries thereon are hereinbefore copied as part of said
80 record, to which reference is here made.

5. Plaintiffs next read in evidence the answer of William Wilson to interrogatories as follows:

"STATE OF NORTH CAROLINA, *Cumberland County:*

"By virtue of a commission from the Honorable Robert N. Hardeman, judge of the superior court of the county of Morgan, State of Georgia, to us directed, we have caused William Wilson, the witness in said commission named, to come before us, and, being duly sworn, true answers to make to the interrogatories to said commission annexed, deposes & answers as follows:

"GEORGE EUBANKS, DAVID EUBANKS, W'M HATCH, & wife, *versus* "FRANCIS A. BANKS & AMBROSE EUBANKS. } Bill for discovery, distribution, &c., in Morgan superior court.

"Interrogatories to be exhibited to W'm Wilson, a material witness for complainants, and who resides without the county of Morgan.

"Question first. Do you know the parties in the above-stated case, and where do you reside?

"Answer. I know them. I reside in Fayetteville, Cumberland County, North Carolina.

81 "No. 2. Were you ever the husband of a lady by the name of

Betsey? If so, state what her father's name was, & when & where did you marry her; how long did you live with her; and when did you leave her, & where?

"Answer. I was the husband of a lady by name of Betsey. Her father's name was Joseph Yarborough. I married her about the year 1818, in the county of Cumberland & State of North Carolina. I lived with her something better than a year. I left her about 1819, in Cumberland County, North Carolina.

"3d. If you were married to a lady by the name referred to, state if you went off & left said lady; & if so, state when it was you left her, and what place, & where did you go to when you left her, & how long did you remain away from her. Do you know the said lady, Betsey, having married another person; and if so, who was it, & how long after your leaving her before said marriage took place?

"Answer 4th. I did go off & left said lady. I left her in Cumberland County, N. C., in or about the year 1819. I went to the State of Tennessee when I left her. I remained away from her nineteen years
82 and six months, during which time I did not write to her or have any communication with her. After an absence of eight years I had reason to believe that she married again to a man by the name of Eubanks.

"Interrogatories by defendants:

"First interrogatory. How long after your intermarriage with Betsey Yarborough & your separation from her did you stay in the county where she lived?

"Answer. After my separation from her, I left immediately. I did not stay in Cumberland County, where she resided, one day after I left her.

"Question 2nd. Is it not true that you lived in the same county or neighborhood with said Betsey after she took up with Thomas Eubanks as his wife; and is it not true that your said Betsey, after your separation, before & after she commenced to live with said Thomas Eubanks?

"Answer. I did not live in the same county or neighborhood with my wife Betsey after she married Thomas Eubanks, and I have never seen the said Betsey after I left her in the year 1819, nor I have never had any communication whatever with her.

83 "Question 3d. Is it not true that on the 9th day of October, in the year 1857, before one Thomas S. Luttutoh, a justice of the peace, you made an affidavit, of which the following is a copy, viz:

"'*Copy of affidavit.*

"'STATE OF NORTH CAROLINA, *Cumberland County:*

"'I, William Wilson, of the county & State aforesaid, do hereby state on oath that about the year 1822 I intermarried with one Betsey Yarborough, in the county of Cumberland and State of North Carolina, and lived with her about one year, and left the State of North Carolina and went to Tennessee, and in some short time after I left I was informed and believe that she intermarried with one Thomas Eubanks. William Wilson appeared before T. S. Luttutoh, a justice of the peace for Cumberland County, and made oath, in due form of law, that the above statement was just & true.

his
"'WILLIAM + WILSON.
mark.

"'Sworn to and subscribed before me the 9th day of October, 1857.
"'Int: T. S. LUTTUTOH, *N. P.*'

"And is it not true that the statements contained in the above affidavit are true? Have you not sworn to the above statement or the substance thereof?

84 "Answer. I made an affidavit about the 9th day October, 1857, before T. S. Luttutoh. I can neither write nor read writing. I never made an affidavit, to my knowledge, that Betsy was married a less time than eight years after I left her, & the statement contained in the affidavit above referred to is not true, & and if I ever swore to it, it was either read incorrectly to me, or I did not know what was contained in it; and I expressly stated to T. S. Luttutoh that I was absent nineteen years & six months, & it was more than eight years after I left her before I heard that she, Betsy, was married again.

"Question 4th. Where have you lived since your separation from said Betsy? Give the names of the places, & the time you lived at each place.

"Answer. I lived in Tennessee nineteen years & six months immediately after my separation from Betsy, and I lived in Cumberland & Chatham Counties, North Carolina, the balance of the time.

"Question 5th. Have any of the complainants or their agents been to see you in relation to your testimony in this case, & what promises were made to you concerning the same? How much money were

85 you to receive if you would swear favorably for them?

"Answer. I was never approached by either of the complainants or their agents, and I never promised any one to swear falsely for money or any other reward.

"Question 6th. How far do you now reside, and how far is the greatest distance you have lived, from said Betsy since your separation, & does Cumberland County adjoin Chatham County?

"Answer. I do not know exactly where Betsy lives, but from what I hear, I suppose I live about fifty miles from her. I lived for nineteen years & six months more than eight hundred miles from her, I think. Cumberland & Chatham Counties do not now join.

"Question 7th. Who first read these interrogatories to you? Who is present when you are being examined? Do you know the commissioners? Where do they live? Be particular and not swear to your answers until you are satisfied they have been written down as you have answered.

86 "Answer. John H. Cook first read these interrogatories to me. I am examined in the office of W'm B. Wright, attorney at law. John H. Cook, J. E. Bryan, H. W. Horn, David Eubanks, and W'm B. Wright, a part of the time present during my examination. I do know the commissioners. They live in the town of Fayetteville, North Carolina. I have been particular and have sworn to nothing but the truth.

"David Eubanks has neither asked any questions or suggested answers.

"WILLIAM his + mark. WILSON.

"Sworn to & subscribed before us this the 7th day of October, 1859.

"JNO. H. COOK, *J. P.*
"JOSIAH E. BRYAN, *J. P.*"

6. The answers of Elizabeth Eubanks to interrogatories as follows:

"STATE OF NORTH CAROLINA, *Chatham County:*

"By virtue of a commission, to us directed, issuing from the hon'ble

the judge of the superior court of the county of Morgan, in the State of Georgia, we have this day caused Elizabeth Eubanks & Joseph Yarborough, the witnesses therein named, to come before us, who, after having been duly sworn in the case stated in said commission, wherein David Eubanks & others are plaintiffs and Francis A. Banks,
87 administrator of Alfred Eubanks, and Ambrose Eubanks, & others, are defendants, made the following answers to the interrogatories herewith annexed.

"Answer of Elizabeth Eubanks to first interrogatory: I am acquainted with David Eubanks, George Eubanks, & Sallie Hatch; they are my children. I live in the county of Chatham, North Carolina. I was married to Thomas Eubanks in the year 1828. That Thomas Eubanks is the father of the said David, George, & Sallie, and were begotten & born in lawful wedlock. That George Eubanks & David are the half-brothers of Ambrose Eubanks & Alfred Eubanks, & that Sally is the half-sister of the said Ambrose & Alfred. I intermarried with one William Wilson in the year 1818; that after little over one year from my marriage said Wilson left me, but where he went I am not informed & did not know, but learned through report, about three or four years after he left me, that he was dead. That it was about nine years from the time said Wilson left me before I intermarried with said Thomas Eubanks.

"Answer to 2nd interrogatory: I heard Ambrose Eubanks mention the fact of the death of Alfred Eubanks. I heard Ambrose Eubanks speak of the amount of property left by Alfred, but I do
88 not remember what amount he stated. I heard him say that him and John Hackney had concluded that David, George, and Sally ought to have something, & he, Ambrose, would give them one hundred dollars apiece, as a gift or gratuity; that they could not get anything out of the estate of Alfred. I know nothing of Ambrose Eubanks making efforts to get complainants to sign a paper conveying away their interest in the estate of Ambrose Eubanks, or of his offering or giving money to any one to induce them to part with their interest. I heard Ambrose Eubanks say he had been to Georgia, & heard him speak of the circumstances attending Alfred's death. I know nothing of his going to see complainants, or either of them, about the estate of Alfred Eubanks, or of his getting them to transfer their interest in the same.

"Answer to the first interrogatory on the cross-examination: My maiden name was Elizabeth Yarborough. I am the daughter of Joseph Yarborough. I was married to William Wilson in the year 1818, in the spring of the year, by one Richard Hucabee, a justice of the peace. The persons present at my marriage, as well as I can recollect, were my father's family, Fleet Cove, Thomas Peyton, and James Wilson.

"To 2nd interrogatory: I heard Ambrose Eubanks speak of the value of the estate of Alfred, but, as I have already stated, I do not re-
89 member the amount. I heard him speak of it at my house, in the presence of David & George Eubanks, my sons.

"To 3d interrogatory: I never heard Ambrose Eubanks offer to give money to any one to assist him in getting complainants to sign a paper relinquishing their claim to Alfred Eubanks' estate.

"To 4th interrogatory: All I ever heard Ambrose Eubanks say upon the subject of the estate of Alfred was at my house, in the presence of my sons.

"To the 5th interrogatory: I was married to Thomas Eubanks in the year 1828, at the house of David Ausley, by Tho's Lasseter, a justice of the peace.

"To the 6th interrogatory. My age is about fifty-nine; my pecuniary

circumstances are moderate; my property is worth about six hundred dollars; I live upon my plantation, my sons, David & George, living with me.

"To the 7th & 8th interrogatories. I heard James M. Hatch, husband of (Sally Eubanks) now Sally Hatch, say that he had consulted with Mr. Phillips as to his rights, & was informed by him that he could recover his share of Alfred's estate; that, subsequently to that and
90 after a certain false paper had been put into circulation by Ambrose Eubanks, Mr. Phillips had said to him that one hundred dollars was better than nothing. I know nothing of Ambrose Eubanks declining to purchase or taking advice upon the subject; but I believe, from what I could see of his maneuvers, that Ambrose Eubanks was endeavoring to cheat and defraud David, George, & Sally out of their share of Alfred's estate.

"To the 9th interrogatory. There is no one present but the commissioners while these interrogatories are being read, and there is no one now present but the commissioners.

her
"ELIZABETH + EUBANKS.
mark.

"Sworn to and subscribed before us, this 11th day of Aug't, 1859.
"JOHN G. McLENAHAN, *Com'r.* [SEAL.]
"FRANCIS N. WADDELL, *Com'r.*" [SEAL.]

91 7. The answers of Joseph Yarborough to interrogatories as follows:

"Answer of Joseph Yarborough to first interrogatory. I do not know by whom the fact of Alfred Eubanks' death was communicated. I heard Ambrose Eubanks say that David, George, & Sally were not heirs of Alfred's estate, for he had made a fair examination, but if they were they should have their part of the estate of Alfred Eubanks; but as they were not heirs he was willing to give them one hundred dollars apiece, not as a part or claim to the said estate; he said he had got a certificate or letter from Wilson which would satisfy any one that they were not heirs. I have no recollection of hearing Ambrose Eubanks say anything of the amount of Alfred Eubanks' estate, or of his using any efforts to get complainants to sign a paper conveying away their interest in Alfred's estate, but he spoke of getting David, George, & Sally to sign a paper, acknowledging that they had rec'd one hundred dollars each from him as a gift, solely from him. I know nothing of Ambrose Eubanks giving or offering to give money to any one to induce complainants to sign a paper parting with their interest in Alfred's estate.

92 "Answer to 3d interrogatory. I know the father and mother of complainants. I was not present at their marriage, but they were married, I think, about the year 1828. I know one William Wilson, but where he was at the time of the marriage of complainants' father and mother I know not, but report said he had left the country, and was dead, he, Wilson, having left the country many years.

"Answer to the first interrogatory on the cross-examination. I am the uncle of complainants and brother of the witness, Elizabeth Eubanks.'

"Answer to 2nd interrogatory. I was born in the year 1804, and reside in the county of Chatham.

"Answer to 3d interrogatory. Turner Bynum, David Eubanks, George Eubanks, & James Hatch, were present in the town of Pittsboro, Chatham County.

"Answer to 4th interrogatory. I was present in Pittsboro the day before this instrument was signed, and heard Ambrose Eubanks say that he had proposed to give them one hundred dollars apiece, & if they did not take it that day, or come to some conclusion, he should never offer it to them any more. I did advise them to take the hundred dollars,
93 and remarked "Boys, what is freer than a gift," and thereupon, as I understood from all hands, they agreed upon the terms as a gift solely from Ambrose, not as a part of their interest in the estate of Alfred Eubanks.

"Fifth interrogatory answered in the fourth.

"Sixth interrogatory answered in the first.

"Answer to 8th interrogatory. The interrogatories were first shown to me by Mr. Francis N. Waddell, and read over by him to me.

"Answer to 9th interrogatory. Myself and the complainants were alone in the room together.

"Answer to 10th interrogatory. I have never interested myself to inquire who were the advisers of complainants.

"JOSEPH YARBOROUGH.

"Sworn to and subscribed before us, this 11th day of Aug't, 1859.

"JOHN G. McLENAHAN, *Com.* [SEAL.]
"FRANCIS H. WADDELL, *Com.*" [SEAL.]

94 8. The answer of Frederick Yarborough to interrogatories as follows:

"GEORGE EUBANKS, DAVID EUBANKS, & J. M. Hatch & wife,
"*vs.*
"F. A. BANKS, AD'R OF ALFRED EUBANKS dec'd, & Ambrose Eubanks.

"NORTH CAROLINA, *Harnett County:*

"By virtue of a commission from the superior court of Morgan County, Georgia, we have caused Matthew Yarborough and Fred. Yarbrough, two of the persons named in said commission, to come before us, who being duly sworn true answers to make to certain interrogatories thereto annexed, deposeth and answers as follows:

"1st witness, FRED. YARBROUGH.

"Ans'r to 1st int. I know all the complainants and have seen Alfred Eubanks, dec'd, but have no recollection of having seen F. A. Banks, adm'r, or Ambrose Eubanks. I reside in Moore County, North Carolina, within a mile of where I was born and raised.

"Ans. to int. 2nd. I was present and witnessed the marriage of the parties referred to, viz., William Wilson and Elizabeth Yarbrough—now widow of Thomas Eubanks—at my father's house, in the year A. D. 1818. They lived together between two and three years after their marriage. Wilson then quit his wife and went to the western
95 country. I saw nothing more of him until about two years ago. I then met him with a woman and four or five children which he claimed to be his wife and children.

"Ans. to int. 3d. I am an illiterate person, and do not know what would benefit complainants.

"Cross-interogatories:

"Ans. to int. 1st. I am brother to complainant's mother. I will be sixty-nine years old next August. When this examination first com-

menced, David Eubanks, one of the complainants, and the other witness were present, but they were sent out by the commissioners and there was or has been no one present since except myself and the commissioners.

"FRED. his + mark. YARBROUGH."

9. The answers of Matthew Yarbrough to interrogatories as follows:

"Second witness, MATTHEW YARBROUGH.

"Ans. to int. 1st. I reside in Harnett County, North Carolina. I know the complainants in this case. I have seen Alfred Eubanks, dec'd, and Ambrose Eubanks, but have never seen F. A Banks, adm'r.

"Ans. to int. 2nd. I was present at the marriage of William Wilson and Elizabeth Yarbrough, (now the widow of Thos. Eubanks,)
96 which took place in the year A. D. 1818, at my father's house in, then Cumberland, now Harnett County, North Carolina. At the same time and place, Fleet Core and another of my sisters, viz., Polly Yarbrough, were married. William Wilson lived with his wife Elizabeth some two or three years. It has been so long since that I would not say positively that it was that long, neither would I say positively that it was not longer. I only give my best impressions. When he quit living with his wife he immediately left this section of the country and I have not seen him since. Of my own knowledge I cannot say where he went or whether or not he has yet returned.

"Cross-interrogatories:

"Ans. to 1st int. The complainant's mother is my sister. My age is sixty-six or seven. There has been no one present during the propounding and answering of these interrogatories save the commissioners and myself.

"MATTHEW YARBROUGH.

"Answered, sworn to, and subscribed before us this the 23d day of February, A. D. 1860.

"J. W. McKAY, *J. P., Com'r.* [SEAL.]
"W'M W. JONES, *Com'r.*" [SEAL.]

"Charges connected with taking the above deposition, $15 00.

"J. W. McKAY.
"W'M W. JONES."

97 10. The answers of David Ansley to interrogatories as follows:

"STATE OF NORTH CAROLINA, *Chatham County:*

"By virtue of a commission to us directed, issuing from the honorable the judge of the superior court of Morgan County, Georgia, we have this day caused David Ansley, one of the witnesses therein named, and Thomas Serug to come before us, who, after having been duly sworn in the case stated in said commission, wherein David Eubanks & others are plaintiffs, & Francis A. Banks, adm'tor of Alfred Eubanks, and Ambrose Eubanks and others are defendants, made the following to the interrogatories hereunto annexed:

"Answer of David Ansley to first interrogatory. I am acquainted with the parties in the above-named suit. I live in the county of Chatham, in the State of North Carolina.

"To 2nd interrogatory. I know Elizabeth Eubanks, the mother of complainants, and have known her for the last thirty-five years.

"To 3d interrogatory. I know of the marriage of Elizabeth Eubanks with Thomas Eubanks. They were married at my house in the
98 year 1828, by one Thomas Lasseter, a justice of the peace in Chatham County.

"To 4th interrogatory. I knew Thomas Eubanks and Elizabeth Eubanks from the time of their marriage up to the death of Thomas Eubanks, and they lived together as man and wife.

"To 5th interrogatory. All I can state is that Thomas Eubanks & Elizabeth were married, lived together as man and wife, and that complainants are the legitimate children of said marriage.

"Answer first to the interrogatories on the cross-examination. I was present at the marriage of Thomas Eubanks & Elizabeth Eubanks, as I have already stated, and that the ceremony was performed by Thomas Lasseter. There were present at the marriage, myself, my wife, Thomas Scrug & his wife, and Rilla Jones. I do not know the age of Thomas Eubanks, but presume from his appearance that he was sixty years old at the time of his marriage with Elizabeth Eubanks.

"Answer to 2nd interrogatory. Elizabeth Eubanks was called and known as Elizabeth Wilson previous to her marriage with Eubanks, for the reason that she had been previously married to William Wilson. Her maiden name was Elizabeth Yarbrough.

"Answer to 3d interrogatory. I never knew of Elizabeth Eubanks ever living with any other man as his wife.

99 "Answer to 4th interrogatory. The maiden name of Elizabeth Eubanks, as I have already stated, was Elizabeth Yarbrough. I know nothing of her marriage with Wilson except from report, nor do I know the year that they were married. I know nothing of the time when William Wilson abandoned Elizabeth Eubanks, nor how long they lived together after their marriage; but I do know that William Wilson did not live in the county of Chatham at the time of the intermarriage between Thomas Eubanks & Elizabeth Eubanks, or did William Wilson come into the county of Chatham until after the death of Thomas Eubanks. Wilson came into the county of Chatham about 1852 or 1853, remained about two years and then left the county. Elizabeth Eubanks, I should judge from appearances, was about twenty-seven or twenty-eight years old at the time of her marriage with Thomas Eubanks. Thomas Eubanks, as I have heretofore stated, I should judge was about sixty years old.

"Answer to 5th interrogatory. I am fifty-seven years of age; my occupation is that of a farmer.

"Answer to 6th interrogatory. I am not related to complainants by blood, but am by marriage.

100 "Answer to 7th interrogatory The complainants were the first persons who talked with me upon the subject of the present controversy, and indeed I may say the only persons. Neither has any lawyer ever talked with me upon the subject.

"Answer to 8th interrogatory. No one is present but the commissioners while these interrogatories are being put to me.

"Answer to 9th interrogatory. I am acquainted with Wesley Hanks, Turner Bynum, & Ambrose Eubanks, as to their characters. I know nothing against them.

"Answer to 10th interrogatory is answered in the 9th interrogatory.

"Answer to 11th interrogatory. I have stated all I know in relation

to this matter, without regard to whether it shall make for complainants or defendants.

"DAVID ANSLEY.

"Sworn to and subscribed before us this 12th day of Aug't, 1859.
"JOHN G. McLENAHAN, *Com.* [SEAL.]
"FRANCIS N. WADDELL, *Com'r.*" [SEAL.]

101 11. The answers of Thomas Searug to interrogatories as follows:

"Answer of Thomas Searug to first interrogatory. I am acquainted with the parties to the above suit, & I live in the county of Chatham.

"Answer to 2nd interrogatory. I know Elizabeth Eubanks and have known her for thirty-five or thirty-six years. She is the mother of David & George Eubanks, & of Sally Hatch, formerly Sally Eubanks.

"Answer to 3d interrogatory. I was at the marriage of Elizabeth Eubanks & Thomas Eubanks. They were married, I think, in the year 1828, by one Thomas Lasseter, at the house of David Ansley. Mr. Ansley's family, myself & wife, & my daughter, Rilla Jones, were present.

"Answer to 4th interrogatory. I knew Thomas Eubanks & Elizabeth Eubanks from the time of their marriage up to the time of Thomas Eubanks' death, and they lived the whole time as man and wife.

"Answer to 5th interrogatory. All I know is, that Thomas Eubanks and Elizabeth Eubanks were married by Thomas Lasseter, a justice of the peace, and that the complainants are the issue of that marriage.

"Answer to—

102 "Answer first to the above interrogatories on the cross-examination. I was present at the marriage of Thomas Eubanks & Elizabeth Eubanks. It occurred, as I have heretofore stated, I think, in the year 1828. The ceremony was performed by Thomas Lasseter, a justice of the peace. Mr. Ansley's family, myself and wife, and Rilla Jones were present, and no one else. Thomas Eubanks I took to be a man about sixty years of age, perhaps a little older, at the time of his marriage.

"Answer to 2nd interrogatory. Elizabeth Eubanks was called, before her marriage with Thomas Eubanks, Betsy, or Elizabeth, Wilson; and I suppose she was called Betsy Wilson from the fact that she had previously been married to a man of the name of William Wilson; so it was reported. Elizabeth Eubanks' maiden name was Elizabeth Yarborough.

"Answer to 3d interrogatory. I never heard or knew of Elizabeth Eubanks living with any other man as his wife.

"Answer to 4th interrogatory. Elizabeth Eubanks' maiden name was Yarbrough, as I have already mentioned. I know nothing of her marriage with or separation from William Wilson, but I do know that William Wilson never lived in the county of Chatham until after the death of Thomas Eubanks. Elizabeth Eubanks, at the time of her mar-

103 riage with Thomas Eubanks, I should judge, was a woman from twenty-eight to thirty years of age.

"Answer to 5th interrogatory. My age is eighty-eight; I have no particular occupation.

"Answer to 6th interrogatory. I am in no way related to complainants.

"Answer to 7th interrogatory. David Eubanks, one of the complainants, first talked with me on this subject, and is the only person that ever did talk about it.

"Answer to 8th interrogatory. There is no one present but the commissioners while these interrogatories are being answered.

"Answer to 9th interrogatory. I know Wesley Hanks, Turner Bynum, and Ambrose Eubanks; they are all men of good character, as far as I know.

"Answer to 10th interrogatory. Is answered in the ninth.

"Answer to 11th interrogatory. I have stated all I know in relation to this matter.

"THOMAS his + mark. SEARUG.

"Sworn to and subscribed before us this 12th of Aug't, 1859.

"JOHN G. McLENAHAN, *Com'r.* [SEAL.]
"FRANCIS N. WADDELL, *Com'r.*" [SEAL.]

104 12. The answers of Robert Faucette to interrogatories, as follows:

"STATE OF NORTH CAROLINA, *Chatham County:*

"By virtue of a commission from Iverson L. Harris, judge of the superior court for the county of Morgan and State of Georgia, issued 2nd day of February, 1860, we have caused the persons named in said commission to come before us, who, being duly sworn true answers to make to certain interrogatories thereto annexed, deposeth and answers as follows:

"To the several interrogatories Robert Faucette deposeth and answers as follows:

"Answer to 1st interrogatory. He states that he resides in Chatham County and in the village of Haywood, and that he knows but one of the parties, viz., David Eubanks.

"Answer to 2nd interrogatory. He states that he had a pretty general acquaintance with the citizens of Chatham County previous to the year 1848; also since that time. His acquaintance has subsisted since the year 1830. He did know William Wilson in the fall of 1849. He did not know him before 1849. He (Wilson) moved and settled in Haywood in the fall of 1849, which was the first acquaintance that ever deponent had with him; and deponent thinks that he could not have been a citizen of Chatham County previous to that time without his reason-
105 ably having known it after deponent's coming into the county, Jan'y 1st, 1830.

"Answer to 3d interrogatory. Deponent saith that he knows nothing of Wilson's absence from Chatham County, only what he (Wilson) told him, that he (Wilson) had been out of the State for 15 years or more. Deponent further sayeth that, so far as his information extended, he was unknown to the citizens of Chatham for many years previous to 1849. Further deponent sayeth not.

"ROBERT FAUCETTE.

"Answered, sworn to, and subscribed before us this the 25th day of February, 1860.

"SETH B. JONES, *Com'r.* [SEAL.]
"JOHN W. SCOTT, *Com'r.*" [SEAL.]

To the cross-questions, Robert Faucette, deponent, answers as follows:

"Answer to 1st cross-interrogatory. Deponent sayeth that he does not know, nor never did know, all the men who have lived in Chatham County, State of North Carolina, since the year 1819.

"Answer to 2nd interrogatory. Deponent answers that he is no kin to the complainants or the Yarboroughs. Deponent further answers that there are two men by the name of Yarbrough, who owe him small debts, which he considers out of date and lost years ago, but does not know whether they are any way related to those mentioned in the
106 interrogatory.

"Supplemental cross-interrogatories:

"Answer to 1st interrogatory. Deponent answers that he is in his sixty-third year. Deponent answereth that no one is present except the commissioners and witnesses.

"ROB'T FAUCETTE.

"Answered, sworn to, and subscribed before us this the 25th day of Feb'y, 1860.

"SETH B. JONES, *Com.* [L. S.]
"JNO. W. SCOTT, *Com'r.*" [L. S.]

13. The answers of Elias Bryan to interrogatories, as follows:

"To the several interrogatories Elias Bryan deposeth and answers as follows:

"Answer to 1st interrogatory. Deponent sayeth that he lives in the village of Haywood, & Chatham County, & has been a citizen of said county for the last twenty years, & that he was slightly acquainted with David & Ambrose Eubanks.

Answer to 2nd interrogatory. Deponent answers that he was well acquainted with the citizens of Chatham County previous to the year 1848, & has been ever since. Deponent states, further, that he has been acquainted with the citizens of Chatham County about twenty years. He knew a man by the name of William Wilson in the year 1850.
107 He first knew him in the neighborhood of Haywood, in the capacity of harness-maker. He did not know him in the county of Chatham previous to the year 1848 & 1849. Deponent sayeth that the said Wilson could not reasonably have been a citizen of Chatham County for the time that he has resided in it, viz., for the last twenty years.

"Answer to 3d interrogatory. Deponent sayeth that all he knows is what Wilson told him, that he had been absent some 15 years or more, & that Wilson told him that he was the husband of the present Mrs. Eubanks. Wilson also told deponent that he had lived in Tennessee.

"Further deponent sayeth not.

"ELIAS BRYAN.

"Answered, sworn to, and subscribed before us this the 25th day of Feb'y, 1860.

"SETH B. JONES, *Com'r.* [L. S.]
"JNO. W. SCOTT, *Com'r.* [L. S.]

"To the cross-questions Elias Bryan deposeth and answers as follows:

"Answer to 1st interrogatory. Deponent answers that he does not know every man that has lived in the county of Chatham, State of
108 North Carolina, since the year eighteen hundred & nineteen.

"Answer to 2nd interrogatory. Deponent answers that he is no kin to the complainants or the Yarboroughs, and that neither the complainants nor the Yarboroughs owe him anything.

"Supplemental cross-interrogatories:

"Answer to 1st interrogatory. Deponent answers that he is 53 years old next August. He further answers that no one is present except the witnesses & commissioners.

"ELIAS BRYAN.

"Answered, sworn to, and subscribed before us this the 25th day of February, 1860.

"JNO. W. SCOTT, *Com'r.* [L. S.]
"SETH B. JONES, *Com'r.*" [L. S.]

Plaintiffs here rested their case, and defendants offerred and the court received in evidence—

1. Duly certified copies of the statutes of North Carolina, as follows:

"An act to restrain all married persons from marrying again whilst their former wives or former husbands are living.

"Whereas many evil-disposed persons, going from one part of
109 our country to another, and into places where they are not known, do marry, having another husband or wife still living, to the utter destruction of the peace and happiness of families;

"*Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That if any person now married, or who hereafter shall be married, doth take to himself or herself another husband or wife, while his or her former wife or husband is still alive, every such offense shall be felony, and the person so offending shall suffer death, as in cases of felony.

"*Provided, always*, That this act shall not extend to any person or persons whose husband or wife shall continually remain beyond sea for the space of seven years together, nor to any person or persons whose husband or wife shall absent him or herself in any other manner for the space of seven years together, such person or persons not knowing his or her said husband or wife to be living within that time.

"*Provided, also, and it is hereby enacted*, That this act shall not extend to any person or persons who are or shall be, at the time of such
110 after-marriage, divorced according to the mode established, or which shall hereafter be established, by law; nor to any person or persons whose former marriage is by law declared to be void and of no effect; nor to any person or persons for or by reason of any former marriage had or made within the age of consent.

"Read three times and passed in general assembly, 13th day of December, anno Domini 1790.

"WILLIAM LENOIR, *S. S.*
"S. CABANUS, *S. H. C.*

"An act to amend the first section of an act passed at Fayetteville in the year one thousand seven hundred and ninety, entitled 'An act to restrain married persons from marrying again whilst their former wives or former husbands are living.'

"*Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That if any person now married, or who hereafter shall be married, doth take to him or herself another husband or wife, while his or her former wife or husband is still living, every such offender shall be adjudged a felon, without benefit of clergy, and shall suffer death.

"Read three times and ratified in general assembly, the 23d day of December, 1809.

"JO. RIDDICK, *S. S.*
"Y. DAVIS, *S. H. S.*

111 "An act amendatory of the law respecting the crime of bigamy.

"*Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That an act passed in the year one thousand eight hundred and nine, entitled 'An act to amend the first section of an act passed at Fayetteville, in the year one thousand seven hundred and ninety, entitled 'An act to restrain all married persons from marrying again, whilst their former wives or former husbands are living,' be and the same is hereby repealed, and the act thereby amended is declared to be fully and entirely in force.

"*And be it further enacted*, That whenever any person, who may be convicted under the aforesaid act, passed in the year one thousand seven hundred and ninety, entitled 'An act to restrain all married persons from marrying again whilst their former wives or former husbands are living,' shall be entitled to the benefit of clergy, for the first offense, it shall and may be lawful for the court, before whom such person may be convicted, to sentence the offender to be fined and imprisoned, and to receive one or more public whippings, and to be branded on the left cheek with the letter B.

112 "*Provided, nevertheless*, If any female shall be convicted of the crime of bigamy, it shall be discretionary with the court to inflict all or any of the aforesaid punishments, branding excepted.

"Read three times, and ratified in the general assembly, this the 26th day of December, 1829.

"W'M J. ALEXANDER, *S. H. C.*
"D. F. CALDWELL, *S. S.*

"CHAPTER 34.

"*Crimes and punishments.*

"SEC. 14. If any person now married, or who shall be hereafter married, doth take to him or herself another husband or wife, while his or her former wife or husband is still alive, every such offence shall be felony, and the person so offending shall suffer death as in case of felony: *Provided*, That he or she shall be entitled to the benefit of clergy, as in cases of felony at common law; and if any person shall be convicted of this offense, and have the benefit of clergy allowed him or her, it shall and may be lawful for the court, before whom such offender may be convicted, to sentence the offender to be fined and imprisoned, and to receive one or more public whippings, and to be branded on the left cheek with the letter B: *Provided, nevertheless*, That if the offender be a woman, it shall be discretionary with the court to inflict all or any of the aforesaid punishments, branding excepted: *Provided always*,

113 That this section shall not extend to any person or persons whose husband or wife shall continually remain beyond the sea for the space of seven years together, nor to any person or persons whose husband or wife shall absent him or herself in any other manner, for the space of seven years together, such person or persons not knowing his or her said husband or wife to be living within that time: *And provided also*, That this section shall not extend to any person or persons who are or shall be,

matter. I have not seen Ambrose Eubanks in two years. I have had no communication with him, his lawyer, or agents; the only conversations I have had were with the complainants. If they have been active I have not heard of it. I don't know what success they have made. I only tell what I know.

119 "Answer 4th. I have answered this question above.

"Answer 5th. The commissioners, Turner Bynum and Robert Eubanks, are present. I know nothing of Ambrose Eubanks' activity. I have not seen him or his strikers in two years.

"Answer 6th. I know nothing about it. If they are unfairly persecuted it is more than I know.

her
"HARRIETT + EUBANKS.
mark.

"Sworn to and subscribed before us this 13th day of May, 1859.

"JOHN MANNING, *Com'r.* [SEAL.]
"JUNIUS A. ALSTON, *Com'r.*" [SEAL.]

4. Answers of William Bland to interrogatories, as follows:

"Answer 1st. I reside in Chatham County, and know all the parties.

"Answer 2nd. I know the mother of complainants. I do not know anything about her marriage.

"Answer 3d. I never saw her first husband to know him.

"Answer 4th. I know nothing in regard to question 4th.

"Answer 5th. I know nothing in regard to question 5th.

"Answer 6th. I know nothing.

"Answer 7th. I went over to George Eubanks', one of the complainants, and Rob't Eubanks told Geo. Eubanks he came over to pay him that money his father owed him, and tendered him, Geo. Eu-
120 banks, the money, and Geo. told him, Rob't, he would settle after awhile, but could not get him to produce the note. This is all I know about the matter in regard to the question-in-chief or the cross-interrogatories.

"W'M BLAND.

"Sworn to and subscribed before us, 13th day of Aug't, 1859.

"JOHN MANNING, *Com'r.* [SEAL.]
"JUNIUS A. ALSTON, *Com'r.*" [SEAL.]

5. Answers of Willis Poe to interrogatories, as follows:

"Answer 1st. I reside within five miles of Pittsboro, on Haw River. I know the parties, except the administrator, Francis A. Banks.

"Answer 2nd. I know the mother of said parties. When I first knew her she was a widow woman. I do not know her maiden name. General rumor says she has been married twice, and her first husband's name was Wilson. This I heard fourteen years or more ago. I do not know where they were married. I do not know how long she and her first husband lived together. I know they parted. I do not know for what cause. They lived separate in my neighborhood some four or five years. The separation took place neither by death nor divorce. Wilson left and went down towards Fayetteville. At the time of their separation they resided on Haw River. They lived separate some
121 four or five years in Chatham County, N. Carolina. During this time Wilson was living with another woman, within two a half miles of his wife, by which woman he had two children; one of the said children was large *large* enough visit my mill—7 or 8 years old.

"Answer 3d. I saw Wilson in Chatham County, N. Carolina, some ten or twelve years ago, and he resided in that neighborhood some four or five years, within two and a half miles of his wife.

"Answer 4th. I do not know how long they lived together, nor where they were married; neither do I know how long they lived separate before she took up with Tho's Eubanks.

"Answer 5th. I did not know Tho's Eubanks.

"Answer 6th. I do not know how many children Thomas Eubanks had by Polly Jones.

"Answer 7th. I have related all that I know. I was the keeper of a public mill in the neighborhood where Wilson lived. He was in the habit of coming to my mill and sending his child he had by this woman after he left his wife, mother of complainants.

"Cross-interrogatories:

"Answer 1st. I am forty-eight or nine years old. I have resided all the time in Chatham County, North Carolina.

122 "Answer 2nd. All that I know relative to the marriage is from rumor and what the neighbors say who lived near them at the time and ever since. I have lived in a half mile of complainants' mother for twenty-three years.

"Answer 3d. My wife and Ambrose Eubanks' wife are first cousins. I am no relation myself. Ambrose Eubanks knew that I lived in the neighborhood of Wilson, therefore supposed that I knew something about the matter. I have had no conversation with Ambrose Eubanks, his agent, or his lawyers. I do not know how energetic Ambrose Eubanks has been in hunting up witnesses. I know nothing of any help he has or ought to receive in this matter.

"Answer 4th. All I know about the first marriage is from hearsay. Where Wilson has lived since he left Chatham I know only from rumor.

"Answer 5th. I know nothing of his hunting up testimony. He has never spoken to me. I saw him to-day. No person is present except the two commissioners & myself. I do not know who the striker of Ambrose Eubanks is.

"Answer 6th. I do not know anything going to show that the
123 complainants have been unjustly treated or persecuted, nor anything that would benefit them in this matter.

"WILLIS POE.

"Sworn to and subscribed before us this 29 Aug., 1859.

"JOHN MANNING, *Com'r.* [SEAL.]
"JUNIUS A. ALSTON, *Com'r.*" [SEAL.]

Defendants here rested their defense, and after argument of counsel the court determined that plaintiffs were not entitled to recover, and directed the jury to find a verdict for defendants. To which decision and order of the court plaintiffs then and there excepted.

And as the facts aforesaid do not appear of record, the plaintiffs do now tender this their bill of exceptions, and pray that the same may be allowed, certified, sealed, and filed, and made a part of the record of said case.

JOHN D. POPE,
*Pl'ff's Att'y.*

124 I do certify that the foregoing bill of exceptions is true, and that the exceptions therein specified were taken and reserved on the trial of said case, and while the jury were at the bar, and the same

is hereby allowed and ordered to be filed and made a part of the record in said case as prayed by plaintiff's counsel.

Witness my hand and seal this the 17th day of March, 1870.

[L. S.] JOHN ERSKINE, [L. S.]

*U. S. District Judge for the District of Georgia.*

Endorsement on the back of the bill of exceptions:

George B. Stovall for use of David Eubanks, George Eubanks, & James M. Hatch & wife, vs. Francis A. Banks, prin.; Hugh J. Ogilby & James A. Reid, sureties. Original bill of exceptions filed in office March 17th, 1870. W. B. Smith, clerk.

125 UNITED STATES OF AMERICA,
*Northern District of Georgia:*

To the honorable the judge of the district court of the United States for the northern district of Georgia.

The petition of George B. Stovall, ordinary of the county of Morgan & said State of Georgia, and who sues for the use of David Eubanks, George Eubanks, James M. Hatch & his wife, Sallie Hatch, all of whom the said usees reside in and are citizens of the State of North Carolina, sheweth that Francis A. Banks, Hugh J. Ogilby, & James S. Reid, & who reside in and are citizens of the said State of Georgia and in the northern district of the same, are indebted to your petitioners, usees as aforesaid, in the sum of thirty thousand dollars. For that heretofore, to wit, on the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, they, the said Francis A. Banks, Hugh J. Ogilby, & James S. Reed, made and executed their certain instrument in writing commonly called an administrator's bond, or bond with conditions, their own proper hands and seals being then & there subscribed & put, and then and there delivered said bond to the then ordinary of the said county of Morgan, and which is now in court & ready to
126 be seen. Whereby, in the State of Georgia, Morgan County, they made known to all men by these presents that they were held and firmly bound and obliged unto the honorable the ordinary of said county, (meaning Morgan,) for the term being, and his successors in office, in the sum of thirty thousand dollars, to be paid to the ordinary, his successors in office or assigns, for which payment well and truly to be made and done they bound themselves jointly and severally and each of their heirs, executors, and administrators firmly by these presents, sealed with their seals and dated at Madison the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

The condition of the above obligation was such that if the above bound Francis A. Banks, administrator of the goods, chattels, and credits of Alfred Eubanks, deceased, (written dec'd,) did make true and perfect inventory of all and singular the goods, chattels, and credits of said deceased, (written dec'd,) which had or should come to the hands, possession, or knowledge of the said Francis A. Banks, or in the hands or possession of any other person or persons for him, and the same so made did exhibit in the court of ordinary of said county, when he should
127 be thereto required, and such goods, chattels, and credits did well and truly administer according to law, and make a just and true account of his acting & doing therein when required by the superior court or the ordinary for the said county, and all the rest of the goods, chattels, and credits which should be found remaining upon the account of said administration, the same being first allowed by the said court,

shall deliver and pay to such persons respectively as are entitled to the same by law, and if it should appear that any last will and testament was made by the said deceased, (written dec'd,) and the same proved before the court, and the executor obtain a certificate of the probate thereof, and the said Francis A. Banks did in such case if required render and deliver up the said letters of administration, then this obligation to be void, else to remain in full force.

And which said writing obligatory was then and there executed in the presence of Fielding (written F.) W. Arnold, the then ordinary of said county, and was then and there delivered to him as such ordinary for the purposes expressed in the conditions thereto attached.

And your petitioners, usees as aforesaid, aver that they were the
128 brothers & sister of the said Alfred Eubanks, deceased, and entitled in law to the one-eighth part each of his estate; that there was, at the death of the said Alfred, eight brothers and sisters and the representatives of brothers & sisters who, under the laws of the said State of Georgia, were entitled to an equal share of his estate.

And they further aver that the said Francis A. Banks did not keep the conditions of the said writing obligatory; that he did not as administrator of the goods, chattels, and credits of Elfred Eubanks, deceased, make a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased which came to his hands, possession, or knowledge of the said Francis A. Banks, or in the hands or possession of any other person for him. Nor has he made an exhibit of the same in the court of ordinary of said county when he was required thereto. Nor has he truly administered according to law such goods, chattels, and credits. Nor has he made a just and true account of his actings and doings thereon when required by the superior court and the ordinary for the said county. Nor has he delivered and paid to such persons respectively as are entitled to the same by law all the rest of the
129 goods, chattels, and credits which were found remaining upon the account of the said Francis A., administrator as aforesaid, the same having first been allowed by the said court; but has failed and refused entirely to comply with the conditions of said writing obligatory.

And your petitioners aver that the said Francis A. Banks, having failed and refused to keep the conditions of his said bond, and having failed and refused to pay over to them the amounts which by law they were respectively entitled, that they commenced their action against him as administrator by bill in chancery in the superior court of said county of Morgan, and prosecuted the same to successful issue at the September adjourned term held and commenced on the thirtieth day of October, eighteen hundred and sixty-six, and did then and there obtain judgment against the said Francis A., as the administrator of the said Alfred Eubanks, deceased, for the sum of three thousand six hundred and fifty-seven dollars each, making in the aggregate recovered by your petitioners ten thousand nine hundred & seventy-one dollars, which is exclusive of costs; all of which will fully appear by reference to the same on the records of said court; and they show that upon said judgment so recovered, fieri facias has been issued in favor of each of your peti-
130 tioners for the sum first aforesaid, and upon which fi. fas. the sheriff of the said county of Morgan has returned "no property of the defendant or of the estate of Alfred Eubanks to be found upon which to levy this fi. fa."

And your petitioners aver that said Francis A. Banks committed devastavit of the goods, chattels, & credits of the said Alfred Eubanks,

deceased; that he appropriated the same to his own individual use and permitted them to be wasted to the amount of thirty-five thousand dollars, & has failed and refused to pay the same over to your petitioners and others entitled to the same, as his said bond required him to do. By reason of all which actings and doings of the said Francis A. Banks, a breach of the conditions of his said writing obligatory has occurred, & right of action has accrued to your petitioners against the said Francis A. Banks & his said co-obligors.

Wherefore your petitioners bring this their suit, & pray process may issue requiring the said defendants to be and appear at the next district court for the northern district of Georgia, then and there to answer your petitioners in an action of covenant, &c.

NATHANIEL G. FOSTER,
*Att'y for Plaintiffs.*

131 UNITED STATES OF AMERICA,
*Northern District of Georgia:*

In the district court of the United States for the northern district of Georgia.

GEORGE B. STOVALL, ORDINARY FOR THE County of Morgan, State of Georgia, for the use of David Eubanks, George Eubanks, James M. Hatch, and his wife, Sallie M. Hatch,
*vs.*
FRANCIS A. BANKS, HUGH J. J. OGILBY, AND James S. Reid.
} Covenant.

The President of the United States to the marshal of the districts of Georgia, greeting:

The defendants, Francis A. Banks, Hugh J. Ogilby, and James S. Reid are hereby required personally or by attorney to be and appear at the next term of said court, to be held at Atlanta on the second Monday of September next, then and there to answer the plaintiff in an action of covenant, as in default thereof the said court will proceed as to justice shall appertain.

Witness the honorable John Erskine, judge of said district court, this third day of August, in the year of our Lord one thousand eight hundred and sixty-seven.

N. G. FOSTER,
*Plaintiffs' Attorney.*

132 Original filed in office Aug. 3d, 1867.

W. B. SMITH, *Clk.*

Served a copy of the within on Hugh J. Ogilby by leaving at his residence, Aug. 8th, 1867.

Served a copy of the within on James S. Reid personally, Aug. 8th, 1867.

Served a copy of the within on Francis A. Banks personally, August 10th, 1867.

C. H. ELYEA,
*U. S. Deputy Marshall, N. D.*

In the district court of the United States for the northern district of Georgia.

GEORGE B. STOVALL, ORDINARY FOR THE USE of David Eubanks, George Eubanks, James M. Hatch, and wife, Sallie Hatch,
*vs.*
FRANCIS A. BANKS, HUGH J. OGILBY, AND James S. Reid.
} Covenant.

And the defendant, James S. Reid, by his attorney John L. Hopkins, comes, and for plea says that the plaintiffs ought not to have and maintain their action aforesaid against this defendant, because he says that the said Francis A. Banks, as the administrator of the goods,
133 chattels, and credits of Alfred Eubanks, deceased, did, in the district aforesaid and before the commencement of this suit, make a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased which came to his hands, possession, or knowledge, or in the hands of any other person for him, and he did make an exhibit of the same in the court of ordinary of said county when he was required thereto, and he truly administered according to law such goods, chattels, and credits, and he made a just and true account of his actings and doings thereon when required by the superior court and the ordinary for said county, and he did deliver and pay such persons respectively that were entitled to the same by law all the rest of the goods, chattels, and credits which were found remaining upon the account of the said Francis A. Banks, administrator as aforesaid, the same having first been allowed by the said court, and he has complied with the conditions of said bond according to the form and effect thereof, and of the said covenant of the said defendant by him in that behalf made as aforesaid, and of this defendant puts himself upon the country.

134 And for further plea in this behalf said defendant, by his said attorney, comes and says that plaintiffs ought not to have and maintain their action aforesaid against this defendant, because he says that there were not at the death of the said Alfred Eubanks eight brothers and sisters, and the representatives of brothers and sisters, who, under the laws of the State of Georgia, were entitled to an equal share of the estate of said Alfred Eubanks, and of this he puts himself upon the country.

And, for further plea in this behalf said defendant, by his attorney, comes and says that plaintiffs ought not to have and maintain their action aforesaid against this defendant, because he says that the plaintiffs, the usees, are not the legitimate brothers and sisters of the said Alfred Eubanks, deceased, and are not entitled each to the one-eighth part of the estate of said Alfred Eubanks; and this the said defendant is ready to verify.

Wherefore, &c.

FANNIN & BILLUPS,
JNO. L. HOPKINS,
*Attorneys, &c.*

Plea filed in office this 23rd Nov., 1867.

W. B. SMITH, *Clerk.*

135 And the said plaintiff, as to the said defendants' pleas firstly and secondly above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff, as to the said defendants' plea, thereof by him above pleaded, says that the said usees are the legitimate brothers and sisters of the said Alfred Eubanks, deceased, and are entitled each to the one-eighth part of the estate of the said Alfred Eubanks; and this the plaintiff prays may be enquired of by the country.

BROWN & POPE,
*Pl'ffs' Att'ys.*

And defendant doth the like.

HOPKINS, *for Def't.*

We agree that a replication in bar by estoppel be considered as filed in the within case by consent, and all formalities waived; and said replication in estoppel is predicated upon the record from Morgan superior court, and covers the 2 & 3rd pleas pleaded by defendant, and all answers or objections touching the merits of said question considered as filed and ready for trial.

Sept. 15th, 1868.

O. A. LOCHRANE, *Pl'ffs' Att'y.*
J. L. HOPKINS, *Att'y for Def't.*

136 We, the jury, find for the defendants.
March 17th, 1870.

T. C. JACKSON, *Foreman.*

Whereupon it is considered by the court that the defendants go hence and recover of the plaintiff their costs in this behalf expended, for which execution may issue.

Signed, March 17th, 1870. JNO. L. HOPKINS,
*Att'y for Def'ts.*

137 In the United States district court for the northern district of Georgia.

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|---|---|
| GEORGE B. STOVALL, FOR USE OF GEORGE Eubanks, David Eubanks, and James M. Hatch, and wife, Sally Hatch, *vs.* FRANCIS A. BANKS, PRIN., HUGH J. OGILBY, & James S. Reid, securities. | Covenant. |

Verdict at March term, 1870, and bill of exceptions taken and certified.

A verdict having been taken for defendants at this the March term, 1870, of the court, and a bill of exceptions having been taken and certified, and plaintiff desiring to have alleged errors upon the record in said case reviewed by writ of error in the Supreme Court of the United States, and counsel for plaintiff desiring to give security as required by law in such cases, and not professing to have authority by power of attorney to sign the names of the usees of plaintiff to the usual bond in such cases:

It is, on motion of counsel for plaintiff, ordered that plaintiffs be permitted to deposit with the clerk of this court the sum of two hundred dollars, which sum of money the clerk is ordered to receive and hold subject to the order of this court, as security for such costs as
138 may upon affirmance of this judgment excepted to be adjudged against the parties excepting.

Order taken, defendants' counsel objecting thereto.

In open court, April 1st, 1870.

JOHN ERSKINE,
*U. S. Judge.*

Clerk's office, district court of the United States for the northern district of Georgia.

GEORGE B. STOVALL, FOR USE OF DAVID EUBANKS, GEORGE EUBANKS, & JAMES M. HATCH, & his wife, SALLY HATCH,
*vs.*
F. A. BANKS, PRIN., H. J. OGILBY, & J. S. REID.

I, W'm B. Smith, clerk of said court, do certify that John D. Pope, as attorney for plaintiffs in error in the above stated case, has this day deposited in this office the sum of two hundred dollars as security for costs, as authorized by the order of court of this date and in this case.

April 1st, 1870.

W. B. SMITH, *Clerk.*

139 Know all men by these presents that we, John D. Pope as principal, and James M. Willis as surety, are held and firmly bound unto Francis A. Banks, Hugh J. Ogilby, and James S. Reid, in the sum of two hundred and fifty dollars, to be paid to the said Francis A. Banks, Hugh J. Ogilby, and James S. Reid, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this April 1st, A. D. 1870.

Whereas George B. Stovall, who sues for the use of David Eubanks, George Eubanks, and James M. Hatch, and his wife, Sally Hatch, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment by the district court of the United States for the northern district of Georgia, rendered in an action brought by plaintiff in error against Francis A. Banks as principal, and Hugh J. Ogilby and James S. Ried as sureties:

140 Now the consideration of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and shall answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN D. POPE. [SEAL.]
JAMES M. WILLIS. [SEAL.]

Taken and attested by

JOHN ERSKINE,
*U. S. Judge.*

STATE OF GEORGIA, *County of Fulton:*

John D. Pope and James M. Willis come before me, and being duly sworn each states for himself that he is worth more than two hundred and fifty dollars, over and above all debts and liabilities and exemptions under the laws of Georgia.

JNO. D. POPE.
JAMES M. WILLIS.

Sworn to and subscribed before me April 1st, 1870.
[SEAL.]

W. B. SMITH,
*U. S. Commissioner.*

141 UNITED STATES OF AMERICA, *ss:*

To Francis A. Banks, principal, Hugh J. Ogilby and James S. Reid, sureties, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Georgia, wherein George B. Stovall, who sues for the use of David Eubanks, George Eubanks, and James M. Hatch, and his wife, Sallie Hatch, is plaintiff and you are defendants in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John Erskine, judge of the district court of the United States for the northern district of Georgia, this the first day of April, A. D. 1870.

[SEAL.] JOHN ERSKINE,
*U. S. Dis't Judge for the Dis't of Georgia.*

142 UNITED STATES OF AMERICA,
*Northern District of Georgia:*

In person before me came John D. Pope, who, being sworn, says that he this day delivered to John T. Hopkins, attorney for defendants in error, a copy of the foregoing citation.

JOHN D. POPE.

Sworn to and subscribed before me this the second day of April, A. D. 1870.

[SEAL.] W. B. SMITH, *U. S. Comm'r.*

143 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the northern district of Georgia, greeting:

Because in the record and proceedings, and also in the rendition of the judgement of a plea which is in the said district court before you, between George B. Stovall, ordinary, who sues for the use of David Eubanks, George Eubanks, and James M. Hatch, and wife, Sallie Hatch, is plaintiff, and Francis A. Banks, principal, and Hugh J. Ogilby and James S. Reid, sureties, are defendants, a manifest error has happened to the great damage of the said plaintiff, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgement be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said
144 Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first day of April, A. D. 1870.

[SEAL.] W. B. SMITH,
*Clerk of U. S. District Court for the Northern Dis't Georgia.*

UNITED STATES OF AMERICA,
*Northern District of Georgia:*

John D. Pope comes this day before me, and after being duly sworn, says that he deposited a copy of the foregoing writ of error in the clerk's office of the district court for said district on the second day of April, A. D. 1870, for John T. Hopkins, attorney for defendants in error.

JOHN D. POPE.

Sworn to & subscribed before me April 4th, 1870.
[SEAL.]

W. B. SMITH,
*U. S. Commissioner.*

145 UNITED STATES OF AMERICA,
*Northern District of Georgia, Clerk's Office District Court:*

I, W. B. Smith, clerk of the district court of the United States for the northern district of Georgia, do hereby certify that the foregoing is a true, perfect, and complete copy of the record and of all proceedings in the cause of George B. Stovall, who has for the use of David Eubanks, George Eubanks, and James M. Hatch, and his wife, Sallie Hatch, vs. Frances A. Banks, as principal, and Hugh J. Ogilby, and James S. Reed, sureties, the same being an action of covenant, as said record and proceedings appear in my office.

In witness whereof I have hereto set my hand and affixed the seal of the said district court this ninth day of April, 1870.
[SEAL.]

W. B. SMITH,
*Clerk of the U. S. Court for Northern District of Georgia.*

146 Supreme Court of the United States.

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| GEORGE B. STOVALL, ORDINARY, &C., FOR the use of David Eubanks, George Eubanks, & Jas. M. Hatch, and his wife, Sarah Hatch, | In error.—December term, 1870. |
| *vs.* | |
| FRANCIS A. BANKS, PRINCIPAL, HUGH J. Ogilby, and James S. Reed, Sureties. | |

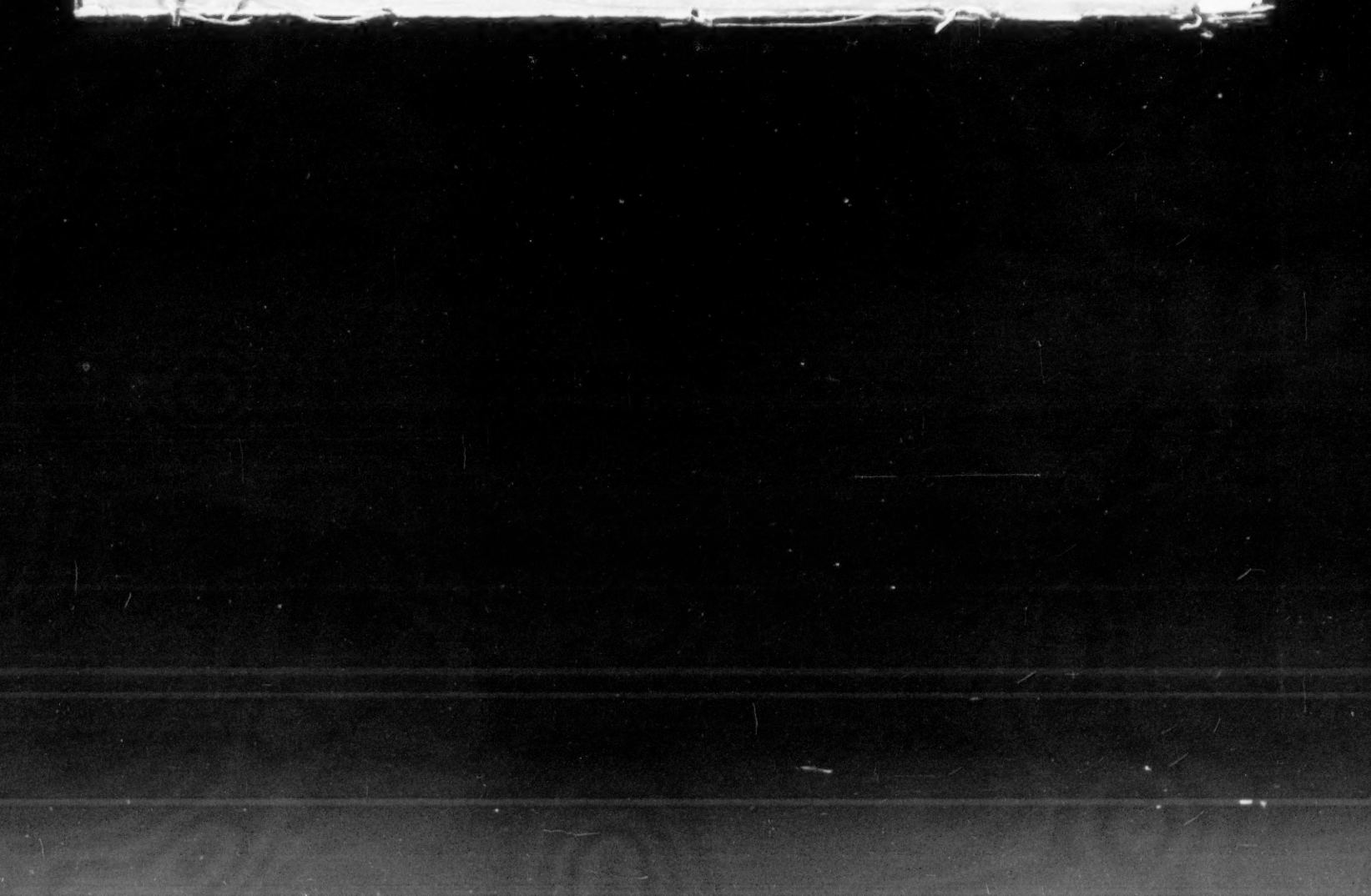
Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said plaintiff by his attorney, John D. Pope, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the court rejected the pleadings and decree from the superior court of Morgan County, Georgia, in the case of
147 George Eubanks et al. vs. F. A. Banks, adm'r, &c., and Ambrose Eubanks; all of which pleadings and decree are copied in the record in this case; and that it further appears in said record that the court directed the jury to sign a verdict for the defendants; and further, that the court held that the usees of plaintiff were entitled to no part of the estate of Alfred Eubanks, deceased.

And the said plaintiff prays that the judgment in said cause may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgment, &c.

JOHN D. POPE,
*Attorney for Plaintiff in Error.*

(Indorsed:) 1869, Dec. term. No. 447. Stovall for use, &c., vs. Banks, p'r & others. Assignment of errors. Filed 4th October, 1870. Jno. D. Pope.

(Indorsement on cover:) No. 447. George B. Stovall, ordinary, (who sues for the use of David Eubanks, George Eubanks, and James M. Hatch, & wife, Sallie Hatch,) plaintiff in error, vs. Francis A. Banks, Hugh J. Oglesby, and James S. Reed. N. Georgia, D. C. U. S.
Filed 23d April, 1870.



# Supreme Court of the United States,

*December Term*, 1869 — *No.* 447.
*December Term*, 1870 — *No.* ____
*December Term*, 1871 — *No.* ____

GEORGE B. STOVALL, Ordinary, &c., for the use of DAVID EUBANKS, GEORGE EUBANKS, and JAS. M. HATCH and his wife, SARAH HATCH,
*vs.*
FRANCIS A. BANKS, Principal, and HUGH J. OGILBY and JAMES S. REED, Sureties.
} COVENANT.

## ARGUMENT OF JOHN D. POPE,

COUNSEL FOR PLAINTIFF IN ERROR.

Franklin Steam Printing House—J. J. Toon, Proprietor.

# Supreme Court of the United States.

*December Term*, 1869 — *No.* 447.
*December Term*, 1870 — *No.* ____
*December Term*, 1871 — *No.* ____

GEORGE B. STOVALL, Ordinary, &c., for the use of DAVID EUBANKS, GEORGE EUBANKS, and JAS. M. HATCH and his wife, SARAH HATCH,
*vs.*
FRANCIS A. BANKS, Principal, and HUGH J. OGILBY and JAMES S. REED, Sureties.
} COVENANT.

## STATEMENT OF FACTS.

This is an action of covenant on an administrator's bond. The property in question is the estate of Alfred Eubanks, a citizen of Morgan county, Georgia, who died in 1856. He had never been married, and, therefore, left no widow or lineal descendants. His administrator was Francis A. Banks, of Morgan county, Georgia, who gave bond as administrator, with Hugh J. Ogilby and James S. Reid as sureties. Upon this bond the present suit was brought.

Alfred Eubanks, whose father was Thomas Eubanks, had five brothers and sisters of the whole blood, and three of the half blood, who appeared and claimed his estate. His half brothers and half sister being on the paternal side, were entitled under the laws of Georgia, if legitimate, to inherit equally with brothers and sisters of the whole blood. There was no controversy on this point. (See Section 2448 (5) of the Revised Code). But the first set of children born to Thomas Eubanks, being of the whole blood to Alfred, disputed the legitimacy of the second set, and on that ground alone, denied their right to any part of Alfred's estate. They insisted that the mother of the second set of children had a living husband at the time of her marriage with Thomas Eubanks. Her maiden name was Betsy Yarborough. Her first husband was William Wilson, who had married her in 1818, and in about one year thereafter, abandoned her and was absent and unheard from until after

1828, when his wife, supposing him dead, married Thomas Eubanks, father of Alfred.

In 1858, Banks, the administrator, sold the property of the estate, preparatory to a distribution. Before any division took place, the second set of children filed their bill in the Superior Court of Morgan county, Georgia, against Banks, the administrator, asserting their legitimacy and claiming to share in the distribution equally with the first set. The complainants in that bill are the usees of plaintiff in this action, to wit: David Eubanks, George Eubanks and James M. Hatch, and his wife, Sarah Hatch, formerly Sarah Eubanks. By an order of Court, all of the first set of children, who were living, and the representatives of those who were dead, were made parties defendant in that bill, and thus, as upon a bill of Interpleader, all those who claimed to share in the distribution, were before the court, parties to the record, and between them the question of the legitimacy of the second set of children was adjudicated. The case went to the Supreme Court of Georgia, and is reported in 34th Georgia Reports page 407. As will be seen from the report of that case, it went back for a new hearing in Morgan Superior Court, and there, in 1866, a final decree was had, dividing the estate of Alfred Eubanks between all his brothers and sisters living, and the representatives of those who were dead, including the second set of children, whose legitimacy was in dispute. The right of the usees of plaintiff in this action, to a distributive share of their deceased brother's estate, was thus settled by a final decree to which all persons interested were parties, and that decree stands unreversed in Morgan Superior Court.

An exemplification of the bill, &c., in Morgan Superior Court is found in the Bill of Exceptions, commencing on page 5 and ending on page 68 of the record, being the evidence which was rejected on the trial of this case in the Court below.

The same testimony which was introduced on the trial in Morgan Superior Court, was read, as part of plaintiff's case, on the trial in the Court below; and as the Reporter, in 34th Georgia Reports, page 409, has extracted the substance of that testimony in his statement of the case, his language is here copied.

1. "The interrogatories of William Wilson, who testified as fol-

lows: That he is a resident of Fayetteville, Cumberland county, North Carolina, was married to Betsy Yarborough, a daughter of Joseph Yarborough, in said county and State, in the year 1818; lived with said Betsy, something more than one year; left her about the year 1819, in said county, and went to Tennessee; remained there nineteen years and six months, during which time he did not write or have any communication with his wife, said Betsy. After an absence of eight years, he had reason to believe that said Betsy intermarried with one Thomas Eubanks; that he left North Carolina immediately upon his separation, not remaining there, in Cumberland, one day; that he never lived in the same county or neighborhood with said Betsy since she married Thomas Eubanks; that he has never seen her since he left her in 1819, and has had no communication whatever with her; that he did make an affidavit about the 9th day of October, 1857; that he can neither read nor write, and never made an affidavit, to his knowledge, that Betsy was married in less than eight years after he left her; that if he ever made an affidavit other than this, it was incorrectly read to him, or he did not know its contents, and expressly stated to the officer taking the affidavit, that he was absent after he separated from his said wife, nineteen years and six months, and more than eight years after leaving her, heard that she was married; that he lived in Tennessee nineteen years and six months, immediately after his separation from said Betsy, since which time he has lived in Cumberland county, North Carolina; that he now lives fifty-five miles from said Betsy, and for nineteen years and six months lived more than eight hundred miles from her.

2. "The interrogatories of Elizabeth Eubanks, who testified as follows: That the complainants are her children, by Thomas Eubanks, to whom she was married in 1828; that Thomas Eubanks is their father, and that they were begotten and born in lawful wedlock; that they are half-brother and sister of said Alfred; that she was married, in 1818, to William Wilson, who, in about one year, left her, and went to parts unknown to her; that she heard it reported, some three or four years after his departure, he, Wilson, was dead; that she intermarried with Thomas Eubanks in about nine years after Wilson departed; that her maiden name was Yarborough; that she married Wilson in 1818, and Eubanks

in 1828, at the house of Thomas Lasseter, a Justice of the peace; that she is about 59 years of age.

3. "The interrogatories of Joseph Yarborough, who testified that he knew the father and mother of complainants; was present at their marriage, about 1828; that he knew William Wilson, but did not know where he was when Thomas Eubanks married the mother of complainants; heard it reported at that time he, Wilson, was dead, having left the county many years before; that he is the uncle of complainants.

4. "The interrogatories of Frederick Yarborough, who testified that he was present when William Wilson and his sister, Betsy, were married; that it was in 1818, at his father's house; that they lived together between two and three years, when Wilson quit his wife, went to the Western country, of whom he saw nothing until about two years since, when he met him with a woman and five children, which he claimed to be his wife and children; that he is the brother of complainants' mother, and is nearly sixty-nine years of age.

5. "The interrogatories of Matthew Yarborough, who testified that he was present at the marriage of Elizabeth Yarborough, his sister, with William Wilson, which occurred in 1818, at her father's house, in the county of Cumberland; thinks that Wilson left his wife in two or three years after his marriage aforesaid; would not be positive; that Wilson left that section of the country when he left his wife; that he has never since seen him, and knows not when he returned, or that he ever returned.

6. "The interrogatories of Daniel Ansley, who testified that he had known Elizabeth Eubanks, widow of Thomas Eubanks, thirty-five years; that he was present at her marriage with Thomas Eubanks, in 1828, in his house, in Chatham county, North Carolina; that Thomas Lasseter, a Justice of the Peace, performed the marriage ceremony; that said Eubanks and Elizabeth lived together as man and wife, from their marriage to the death of Thomas Eubanks; that complainants were the cdildren of said marriage; that Thomas Eubanks was sixty years of age at the time of said marriage; that said Elizabeth was known, at the time of marriage, as Elizabeth Wilson; that he never knew of William Wilson living in the county of Chatham until after the death of Thomas Eubanks;

that he came to said county in 1852 or 1853, where he remained only a short time.

7. "The interrogatories of Robert Fawcett, who testified that he has resided in Haywood, Chatham county, North Carolina; has had a large acquaintance with the people of said county, since 1830; that said Wilson married and settled in Haywood in the fall of 1849, which was the first time he ever heard of him.

8. "The interrogatories of Elias Bryan, who testified that he was a resident of Haywood, Chatham county, North Carolina; knew the citizens thereof for the last twenty years, and never knew William Wilson in said county previously to 1848 or 1849.

"Defendants submitted the following testimony, to show that the complainants were not lawful heirs of Alfred Eubanks:

1. "The interrogatories of Harriet Eubanks, who testified that she had known the mother of the complainants for more than thirty-two years; when she first knew her, she was known as Betsey Wilson, and was said to be the wife of William Wilson, and living separately from him; that she does not know when she intermarried with Wilson, nor when she separated from him, and never saw Wilson; that she knew Thomas Eubanks, father of complainants, and knows that he "took up" with said Betsey early in the fall of 1828; that when she first knew Betsey Wilson, she had a little "girl daughter" named Isabella Wilson, aged about four years, which child was only about five or six years of age when Betsey Wilson took up with Thomas Eubanks; that she has heard Thomas Eubanks say he had married Wilson's wife and knew she was Wilson's wife; that she is forty-eight years of age, and married the brother of Ambrose Eubanks, and has lived in Chatham county, North Carolina, since 1820.

2. "The interrogatories of Willis Poe, who testified that he knows the mother of complainants. When he first knew her, she was a widow; that she and her husband had parted; that they lived separate in his neighborhood, more than four or five years; that Wilson was living with another woman, within 2½ miles of his wife, by which woman he had two children, one of whom was large enough to visit his mill, and was seven or eight years of age; that he did not know Thomas Eubanks nor anything of his taking up

with Betsey Wilson; that he knows nothing, except from rumor, of the marriage of William Wilson and Betsey Wilson.

3. "The interrogatories of James Wilson, who testified that he knew Betsey Yarborough before her marriage with Wilson; that after said marriage, Wilson and his wife, Betsey, did not live together more than twelve months, when they separated, and she went to Chatham county; that where Wilson went, he does not know; that he does not know in what year Wilson separated from his wife; that he heard of him frequently as living in Fayetteville, about one year from the separation, and hears he is there yet; that when he came back, it was generally known he was living in Fayetteville; that in about twelve months after Wilson left, said Betsey took up with Thomas Eubanks; that it was generally known he, Wilson, was living in Fayetteville at that time, when she, Betsey, took up with Eubanks; that a short time after Betsey took up with Eubanks, she, Betsey, told witness, "she was afraid to talk out, for fear of the law;" that he, witness, lived within three miles of Thomas Eubanks when he married Betsey Wilson; that Wilson and wife, Betsey, after the marriage, lived about thirty-five miles from him; that he never saw Wilson, but frequently saw Betsey."

Upon the final decree from Morgan Superior Court (see Record page 68, *et seq.*) a *fieri facias* issued in favor of each one of the usees of plaintiff in this action for the amount decreed to be due, and returns of *nulla bona* were made thereon by the proper officer.

This action on the bond of the administrator, against him and his sureties, was then commenced to recover the amounts due to the usees respectively. James S. Reid, one of the defendants, filed his plea, denying in the 2nd and 3rd Counts, the legitimacy of the usees of plaintiff, to which plea a replication, in bar, was considered, by agreement of counsel, as filed, predicated on the decree from Morgan Superior Court.

The balance of the plea was merely formal, and need not be further noticed. Thus matters stood when the case was called for trial.

## QUESTIONS RAISED ON THE TRIAL BELOW.

There were two rulings made by the Court in the progress of the trial upon which error is assigned here. The first was upon the admissibility of the Record from Morgan Superior Court, which plaintiff offered in evidence, and, on objection made by Reid's counsel, was ruled out by the Court. Counsel in stating his objection, waived the question of variance, but insisted that the decree in Morgan Superior Court was not definite and final as to the amount of money going to the usees of plaintiff. It was insisted by counsel for plaintiff below, and is insisted here, that this decree was definite and final as to the amount purporting to be due thereon, and if it was not, it was final and conclusive as to the legitimacy of the usees of plaintiff, and that it was admissible on that point, even if the Court should hold that the amount of the recovery must be fixed by other testimony. The Court ruled out the whole record, for any and every purpose. Plaintiff then offered simply the last verdict and decree, and the Court again ruled the evidence inadmissible. (See Record, pages 77 and 78).

The second ruling complained of, was the direction to the jury to sign a verdict for defendants. The meaning of this direction was that the Court determined that the usees of plaintiff were bastards and not entitled to inherit any part of Alfred Eubank's estate, that the first set of children of Thomas Eubanks were entitled to the whole estate of Alfred, and this notwithstanding the Supreme Court of Georgia had solomnly decided otherwise.

# ARGUMENT.

I now invite the attention of the Court to a discussion of the legal questions involved in the rulings of the Court. My effort will be to show that the Court erred in both rulings above stated.

I. *Rejection of the Record from Morgan Superior Court.*

It has already been asserted that in objecting to the decree from Morgan Superior Court, counsel for defendant, Reid, waived any real or supposed variance between the pleadings and the proof offered. His exact language is given in the Bill of Exceptions (page 77 of the Record), and it is apparent from what is there stated, that all parties, the Court included, so understood counsel. No variance was pointed out to the Court, nor was any question of variance discussed by counsel.

The Court was requested to determine the admissibility of the decree and to reject it upon the sole ground that it was not a *final decree*; and the Court decided that the decree was not final, and, for that reason alone, rejected it.

But this Court may possibly feel obliged to decide upon the merits of this objection on account of variance, and therefore it is proper to notice it further. Counsel for defendant, Reid, is supposed to have referred to the fact that one of the complainants in the case in Morgan Superior Court, is once or twice called William Hatch, and his wife once or twice called Mary. Hatch's name is James M. Hatch and his wife is named Sarah Hatch. The Court will observe that Hatch's wife is called Sarah the first time her name is mentioned in the bill filed in Morgan Superior Court. A little further on she is called Mary. In the answer of Francis A. Banks, (page 12 of the Record) James M. Hatch and his wife, Sarah Hatch, are stated to be parties complainant. In the answer of Ambrose Eubanks, (page 30 of the Record), this language occurs: "Nor has he (respondent) any doubt about the said Mary—intended he presumes for Sarah—being the wife of said James M. Hatch." Again: At March term 1860, of Morgan Superior Court, being the second term after the bill before referred to was

filed, an order was taken making parties by consent, and if it could be pretended that James M. Hatch and his wife, Sarah, had not been parties to that litigation before that time, certainly they were made parties complainant by the order; and the decree following, in which they were also named as complainants, is good in their favor. The order is as follows:

"George Eubanks, David Eubanks, James M. Hatch, and his wife, Sarah.

*vs.*

Francis A. Banks, Adm'r of Alfred Eubanks, dec'd, and Ambrose Eubanks.

} In Equity, March Term, 1860.—All parties consenting, it is ordered by the Court, that Edward H. Ward and his wife, Cynthia, Henry Gorman and his wife, Rachel, Asa Eubanks, Sidney Eubanks, etc., etc., (naming all who were interested in the estate,) be made parties defendants to said bill." (See page 51 of the Record).

Now, after all this, can it be seriously contended that James M. Hatch and his wife, Sarah, were not parties to the record from Morgan Superior Court, and that they can take no benefit from that decree?

In Myers *vs.* Fenn, 5 Wallace R. 205, which was a creditor's bill, a creditor came in and took part in the litigation and became a party to the record without a previous order of the Court being obtained making him a party, and it was held on appeal that "the want of such order not being objected to and the proceedings having gone on to its conclusion as if it had been obtained," the decree would not be reversed. That case is much stronger than this. There, an appeal was regularly entered, and if there had been any error in the proceeding, it was in order to correct it. But here the objection is a collateral attack on the decree for alleged irregularity in the proceedings had in the Court rendering the decree, and such an attack on the decree cannot be made. "When a judgement is used as evidence its regularity cannot be inquired into." Piatt *vs.* Oliver, Williams *et. al.*, 2 McLean R. 268—*Id.* 473. "If there were irregularities in the proceedings of the State Court, it was for that Court to correct them, had complaint been made at the proper time." Ingraham *vs.* Dawson *et. al.*, 20 Howard R. 486. Judgements rendered in courts having jurisdiction of persons and subject matter, as long as they are subsisting and

unreversed, are binding, although they may be irregular or erroneous, and must be directly attacked and vacated in a proceeding instituted for that purpose. 8 Ga. R. 143—9 *Id.* 117, 244—10 *Id.* 65—12 *Id.* 337—14 *Id.* 323. "Every reasonable presumption is to be made in favor of a judgement or decree of a Court of general jurisdiction." Pennington *vs.* Gibson, 16 Howard R., 65. But, as before intimated, it would seem to be wholly unnecessary to multiply either reasons or authorities upon a ground of variance which was waived by counsel; especially when it is apparent that the variance exists only in imagination, and the question, if raised at all, is in a proceeding where it is wholly inadmissible. If any real difficulty exists, the Superior Court of Morgan county, Georgia, has power to amend the record in furtherance of justice, (see Revised Code, section 3449), and it would be the pleasure of the Court, no doubt, to permit the amendment to be made.

Coming at once, then, to the merits of the question:

(1.) Was the decree from Morgan Superior Court, admissible in evidence?

(2.) And, considered as admitted in evidence, what was its legal effect?

(1.) It was admissible in evidence on two grounds.

(a.) It is definite and final, in all respects, and under the laws of Georgia, an execution could issue; and as the Record shows, (page 68 *et. seq.*) execution did issue, to enforce the payment of the amount decreed to be due. The last sentence in the decree is made the special reason for asserting that it is not final. Other expressions, involving the same principle in a less striking degree, may be quoted, but if this last sentence does not destroy the finality of the decree, nothing contained in it does. The last sentence is as follows: "That the shares of the respective parties as herein awarded be subjected to rateable deduction for fees yet unpaid for the collection of notes belonging to said administrator." This follows after a definite and specific statement of the number of dollars going to each heir, and also after this language: "And that the Clerk issue to each of said parties or their attorneys, execution for the respective sums adjudged them, upon application to him for the same, after four days from the adjournment of this Court." (See Record page 67).

Is this decree final? That it was intended to be final by the Court which rendered it, is unquestionable. Execution is ordered to issue. It does not appear from the face of the decree that any portion of the litigation was held back for future adjudication. A right reserved to have a deduction for any attorney's fees which the administrator should be afterwards obliged to pay, is no more than a right reserved to pay in any specific piece of property, or any designated kind of currency would have been. If the question of the amount of these attorney's fees had been referred to a master, and everything else in the decree had been as it is, it would still have been a final decree. It might be that an action of debt or assumpsit would not lie upon it, still the decree would have been what is known to the courts as a final decree. If it had been rendered in the United States Circuit Court, an appeal might have been taken at once, as from a final decree. In Mills *vs.* Hoag, 7 Page's Ch. R. 19, Chancellor Walworth, says, "Chief Justice Savage defines a final decree to be the last decree which is necessary to be entered to give to the parties the full and entire benefit of the judgment of the Court. The decree in this case comes within that definition, as no further questions or directions are reserved for the future judgment of the Court. And although, some further proceedings are to be had before a master to carry into effect the decree, all the consequential directions depending upon the result of those proceedings are given in the present decree. It is true, there may be exceptions to the report; and in that case a further order of the Court will be necessary to dispose of those exceptions. But a decree is not the less final in its nature because some future orders of the Court may possibly become necessary to carry such final decree into effect."

The case of Forgay *vs.* Conrad, 6 Howard R. 201, was a bill filed by an assignee in bankruptcy to set aside sundry deeds alleged to have been fraudulently made by the bankrupt, for an account of the rents and profits, and also for an account of various sums of money alleged to have been received by one or more of the defendants. A decree was had annulling the deeds, directing the property in dispute to be delivered to complainant, and awarded execution. But, by the last paragraph in the decree, it is provided, "*and so much of said bill as contains or relates to*

*matters hereby referred to the master for a report is retained for further decree in the premises.*" This was held to be a final decree. In delivering the opinion of the Court, Taney, Chief Justice, said, "And when the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one *to that extent*, and authorizes an appeal to this Court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by a further decree the accounts between the parties pursuant to the decree passed." This case of Forgay *vs.* Conrad, has recently been declared to contain the true rule on the subject. (See Thomson *vs.* Dean, 7 Wallace R. 342, and Railroad Companies *vs.* Bradleys, *Id.* 575.) To the same effect are Whitney *vs.* The Bank of the United States, 13 Peters R., 15 Wabash and Erie Canal *vs.* Beers, 1 Black R. 54 and Michoud and others *vs.* Girod and others, 4 Howard R. 503. In 2 Daniell's Ch. Practice, side pages 641–2, the author says that in some cases the parties are so circumstanced that a decision upon all the points connected with their interests cannot be pronounced until a future period; as in cases of remaindermen whose rights are not immediately to be acted upon; and, after saying that all the Court usually does, under such circumstances, is to decree the interest of the fund to be paid to the person entitled to the dividends during his life, and to declare that, upon his death, the parties interested in the fund are to be at liberty to apply to the Court as they may be advised, the author adds: "The same sort of liberty is also given in any other case in which it may seem requisite; and it is to be observed that the effect of it is not to alter the final nature of the decree. A decree with such a liberty reserved, is still a final decree, and when signed and enrolled, may be pleaded in bar to another suit for the same matter."

In the Court below, counsel for defendant, Reid, cited, and in fact his main reliance was upon, the case of Sadler *vs.* Robins, 1 Campbell's N. P. Reports 253. This seems to be the best case which can be found in support of the doctrine that the decree from Mor-

gan Superior Court was not final. Let us see how far this case goes. It was an action of assumpsit on a decree of the High Court of Chancery, in the Island of Jamaica. The decree was for "the sum of 3,670£. 1s. 9½d., current money of the said Island, with interest thereon, from the 31st day of December then last past, "*first deducting thereout the full costs of the said defendants expended in the said suit, the same to be taxed by George Howell, Esq., one of the masters of the said Court; and also deducting thereout all and every further payment or payments, which the said James Sadler and R. Haywood, or either of them, might, on or before the said 1st day of January*, 1806, *show to the satisfaction of the said George Howell, that they or either of them had paid on account of their said testator's estate.*" In this case the Court held that the decree was incomplete and that assumpsit would not lie upon it, *but this ruling was based solely on the ground that the costs had not been taxed.* The language of the Court is explicit on this point. Lord Ellenborough, who delivered the opinion, not only *did not say* that the right to deduct what Sadler had paid on account of his testator's estate, was any objection to the decree, but, on the contrary, he strongly intimated that it was *no* objection; that no payments being proved, it might be presumed that there were none. Let us quote:

"Lord Ellenborough.—"Deducting thereout the full costs of the said defendants," is the same as "the full costs of said defendants being first deducted thereout," and if the defendants did not appear to tax their costs, the plaintiff might have proceeded *ex parte*. At present the sum due on the decree is quite indefinite. The operations to ascertain it should have taken place in the Court of Chancery of Jamaica, and can not be gone through here, at *nisi prius*. Had the decree been perfected, I would have given effect to it, as well as to a judgment at common law." Further on he says: "There appears to be due to the plaintiff upon the decree a sum of money—x. Till the sum to be deducted is ascertained, it is impossible to say how much is due. The plaintiff ought to have taxed the costs *ex parte*. There is no court where this proceeding is not allowed. At present no one can predicate how much the defendant is decreed to pay. The decree is therefore imperfect and can not be the foundation of an assumpsit. As to

the payments on account of the testator's estate," (and this is the only mention made in the opinion of the Court of these payments,) "none being proved, it might be presumed that there were none; but there had certainly been costs expended in the suit, and until they are deducted according to the terms of the decree, an action can not be maintained upon it."

This extended quotation from the case referred to, is deemed proper because it is the strongest case which defendant's counsel could produce on the trial below, and will probably be his chief reliance in the Supreme Court, upon this branch of the argument. Before passing from the case it is obvious to remark, (1.) that the case at bar is not an action upon a decree as the case cited was; (2.) that the decree in the case cited would probably have been held final and complete if costs had been taxed, (the presumption being that there were no payments on account of the estate, in the absence of proof;) (3.) that in the case cited, certain matters were held open to be settled before the master, while in the case at bar nothing of the kind is true, but execution is ordered to issue; (4.) that in the case at bar the decree offered was relied on as an estoppel upon the question of legitimacy, upon which point at least, it was positive and final, and (5.) that a decree from a State Court, being entitled to "full faith and credit," is to be received with more favor and treated with more consideration than a decree from the West India islands when presented in the Courts of England. Observe the language of Lord Ellenborough in the case cited: "The case we had at the sitting after the last term, shows with what facility these judgments and decrees in the West India islands are obtained; and they ought to be examined with some strictness before they are put in force in this country." The case of Sadler *vs.* Robins, therefore, can not help the case of defendants in error.

The true doctrine is that assumpsit or debt will not lie on a decree which is not for an ascertained or definite sum of money. The decree from Morgan Superior Court is sufficiently definite as to the sums due thereon to sustain an action. The costs are taxed in this decree, and therefore it is unlike that referred to in Sadler *vs.* Robins. No attorney's fees are proven to have been paid, and therefore, as in the case of Sadler *vs.* Robins, it is to be presumed

that there were none. If it appeared that there were fees paid, or to be paid, it was the intention of the decree that when the execution was paid off, these fees should be allowed as payment *pro tanto*. If the plaintiff refused to allow the payments, an illegality to the execution would, under the laws of Georgia, have been the proper remedy. But because an affidavit of illegality will lie to an execution in the event of its issuing or proceeding illegally, it does not follow that the decree or judgment upon which it issues is not final. According to section 3614 of the Revised Code of Georgia, "When an execution against the property * * * of any person shall issue illegally, or shall be proceeding illegally, and such execution shall be levied on property * * * such person (the defendant) may make oath in writing, and shall state the cause of such illegality, and deliver the same to the Sheriff, or other executing officer, as the case my be, together with bond and good security for the forthcoming of such property as provided by this Code," etc., etc. Section 3616 provides for the trial of issues formed on these affidavits of illegality. In Georgia, whenever an execution has been paid off, or there exists any grounds either legal or equitable, why it should not be enforced further, an affidavit of illegality is the appropriate remedy. Section 2027 of the Code says: "No suitor, however, is compelled to appear on the equity side of the Court, but he may institute his proceeding for an equitable course of action upon the common law side of the Court at his option," etc. A Georgia lawyer would have no difficulty with this decree from Morgan Superior Court. If Banks, the defendant, had paid any fees he could claim a credit on the execution for the amount of them, and if he tendered the balance due, and a levy was made notwithstanding, a simple affidavit of illegality would be all the case could require.

The Court below should have allowed the decree to be read in evidence, not only as an absolute estoppel on the question of legitimacy, but also as *prima facie* evidence of the amount due, leaving it for defendant to show that there were attorney's fees to be deducted if he could, and if he could show none, then none could be presumed. By such a course, effect would have been given to the decree, and justice would have been done to all parties. By the ruling that was made, the administrator makes three-eighths of the

estate, or about $12,000. The first set of children cannot recover this three-eighths out of the administrator, because this decree is binding on them and gives them only five-eighths of the estate; and the sureties of the administrator cannot be held liable to the first set of children for more than five-eighths of the estate, for that would be to hold them liable for more than the principal was bound for, and this of course is impossible. See 30 Georgia R., 927. But the question whether a decree is valid and binding does not depend upon whether an action of assumpsit or debt will lie upon it. A decree for a specific performance, or for the cancellation of a deed, could not be the foundation of an action of assumpsit or debt; yet such a decree would be as binding as any other decree. That portion of this decree from Morgan Superior Court which settles the legitimacy of the usees of plaintiff, to which all persons at interest were parties, could not, if it constituted the whole of the decree, be made the foundation of an action of assumpsit or debt. But it does conclusively settle the legitimacy of the second set of children, and all who were parties to it are estopped by it. It would seem to be surperfluous to cite authorities to this point. Only two will be referred to. In the case of Blackburn *vs.* Crawfords, 3 Wallace R., 175, it was held that "By the law of Maryland a finding by a jury on an issue directed by a Probate Court, that a party who had applied for an administration on an estate of one whom he asserts to be his uncle, is illegitimate, and a subsequent grant of administration by the Court to another party is conclusive of the illegitimacy *as between these parties*, in an action of ejectment subsequently brought by the party rejected."

That case is in many respects similar to the one at bar, and the principle decided there, is applicable here. If all the parties to the ejectment suit had been applicants for letters of administration and had been rejected as illegitimate, all would have been concluded in the subsequent action of ejectment. To the same effect is the case of Suarez *vs.* Mayor, etc. 2 Sanford's Ch. R., 173. In this last case it was held that the judgment of a Superior Court in the State of New Grenada, was conclusive of the right of two natural children to take, as heirs-at-law, one-fifth of certain funds of their father, on deposit in New York, the decree being rendered under the laws of New Grenada the domicil of the intestate.

(b.) But suppose this decree is not in all respects a final and complete decree; still, it may be, and is, conclusive as to all matters which it finally disposes of. The cases already cited and quoted from affirm this doctrine. Numerous others might be added. The case of Pulliam *vs.* Christian, 6 Howard, 209, is an instance of a decree which was not final in such a sense as that an appeal would not lie upon it; yet, Justice McLean, in delivering the opinion of the Court, says: "This decree is final only as to the trust deed." It frequently happens that all the points involved in a case are not settled at the same time. Sometimes a Master's report becomes final as to those matters which it covers, while other points in controversy remain open till the final hearing. Sometimes an issue is formed and the verdict of the jury had, and judgment rendered, upon a matter merely collateral to the main issue, and yet all the parties are as much bound by the finding, as far as it goes, as they are by a final judgment or decree. Suppose that in the course of the litigation in Morgan Superior Court it had become necessary, according to the practice of that Court, for a single issue, *ex. gr.*, the legitimacy of the second set of children, to be submitted to a jury, and their verdict had been rendered, and judgment entered thereon, would not all parties to the proceeding have been bound by the result? Three questions were submitted to the Court and jury, on trial in Morgan Superior Court, and they were all covered by the decree: (1.) the amount of Alfred Eubank's estate remaining in the hands of the administrator for distribution; (2.) who were entitled to take that estate, and (3.) the amount going to each distributee.

Now, will the Court say that for a mere irregularity—if indeed there is any irregularity—in the division of the estate among the heirs, the whole decree must go for naught? Suppose there had been blank dollars awarded to each of the distributees, after the sum to be distributed had been definitely settled, and the heirs to the estate determined, would the decree when offered in evidence, be held void and of no effect? Is it possible that when a judgment or decree from a State Court of general jurisdiction is offered in evidence in a Federal Court, the forms and manner of pleading and practice in the State Court must undergo review, and

if anything not deemed according to rule is detected in the proceedings, "full faith and credit" is to be denied it?

(2.) What effect would the decree from Morgan Superior Court have had in the trial of this case in the Court below, if it had been admitted? If it would have had none, then it was not error to reject it. It is necessary, therefore, that its legal effect be determined in order to settle the question of its admissibility. It is important that this Court determine the effect of this decree for another reason: it may save the trouble of hearing the case again on another writ of error.

Plaintiff insists that this decree was and is final and conclusive as to the legitimacy of the usees in this action, not only as between the parties to the record in Morgan Superior Court, but as to all the parties in this action also; and the rules of law upon which this proposition rests are unmistakably plain.

Every judgment or decree rendered by a court having jurisdiction of person and subject matter is conclusive on parties and privies. It cannot be collaterally attacked; nor can it be vacated anywhere except for fraud, accident, etc., unmixed with negligence on the part of the defendant; and then only in a direct proceeding for that purpose. Parties who are dissatisfied with a judgment or decree, must apply in the Court where the same is rendered in the manner and within the time prescribed and limited by law, or they must appeal or sue out a writ of error, as the case may require. If they fail to pursue the course marked out by law for correcting irregularities and errors, they are bound to abide the decision, be it right or wrong.

It is perfectly clear that all the parties to the record in the case in Morgan Superior Court, are concluded by the decree rendered by that Court, notwithstanding that decree may be irregular or erroneous. No other Court, State or Federal, can ever require Banks, the administrator, to distribute Alfred Eubanks' estate differently from the requirements of that decree. No man can serve two masters. It is impossible for the same fund to be paid to two different persons. The bond of Banks, the administrator, is payable to the Ordinary of Morgan county, Georgia, is taken under and by virtue of the Statutes of Georgia, and is conditioned for the making and returning of a true inventory to the Ordinary

of Morgan county, etc., and proceeds as follows: "And such goods, chattels, and credits do well and truly administer according to law, and make a just and true account of his acting and doing therein, when required by the Superior Court or the Ordinary of said county, and all the rest of the goods, chattels and credits which shall be found remaining upon the account of the said administration, the same being first allowed by the said Court, shall deliver and pay to such persons respectively as are entitled to the same by law," etc. It would be impossible for an administrator to distribute an estate contrary to the law as expounded by the Court under whose peculiar direction and control he acts, without incurring liability. He cannot be "a law unto himself." The Court of Ordinary and Superior Court may commit blunders innumerable, still he has no safety but in obedience to their judgments and decrees. Whatever the administrator is required to do, his sureties are bound to do for him, if he fails. The sureties have no duties independent of those of their principal; they simply make good his default. If he is required to distribute the estate to one person, the sureties cannot be made liable because he did not pay it to a different person.

Suppose Banks, the administrator, had paid over the proceeds of Alfred Eubanks' estate, as required by the decree from Morgan Superior Court, could the first set of children have sued and compelled his sureties to pay to them the three-eighths of the estate which their principal obligor had already, under order of Court, paid to the second set of children?

What is it to the sureties of an administrator, whether their principal distributes the estate in his hands to one or to another of several claimants, provided he obeys the laws of the land, as expounded by the Courts having jurisdiction of the matter? If the administrator is bound to pay to one man, what right has his surety to say, "true, but if you fail *I* must make good your default to another and different man." It is not allowed to any man at his caprice to interfere in questions where he has no interest.

Suppose Banks, the administrator, had filed a Bill of Interpleader against the first and second sets of children, asking the Court to decide to whom he should distribute the estate in his hands. That would have been more regular, perhaps, than for

one set to file a bill against him and then have all the other set made parties defendant. Still the result is precisely the same —the same point is arrived at. Then suppose the decree of the Court was had on this Bill of Interpleader, requiring the estate to be distributed among both sets of children, giving each a share. Then after the administrator proves insolvent and there has been a return of *nulla bona* as to him, can his sureties file a new Bill of Interpleader, and have the same question as to who are the proper heirs, again heard, and again decided? To state the case is to argue it. And yet that is precisely what the surety of Banks, the administrator, is seeking to do in this case. What interest has he in that question? What right has he to litigate it? He is required to make good his principal's default. Let him do that, and we will be content, and nobody else can harm him.

Again; a judgment is admissible as against persons not parties or privies, to prove its own existence, and all the legal consequences of such judgment, and is generally conclusive evidence for that purpose. 1 Starkie on Ev., 213. "Where the law gives to a judgment a particular operation, that operation is properly shown and demonstrated by means of the judgment, which is no more *res inter alios* than the law which gives it force." 3 Phillips on Ev. Hill & Cowan's Notes 821. "A judgment is always admissible with a view to the proof of the judgment itself *as a fact* and its legal consequences." *Id.* 821. "The doctrine prevails with regard to a judgment or decree which is of the muniments of a party's estate; as where it is necessary to establish the validity of a deed made under authority of a decree in Chancery; there the decree may be given in evidence by or against a stranger." Barr *vs.* Gratz, 4 Wheaton 212. So, also, in ejectment, where a title is derived from a Sheriff's sale under execution, the judgment upon which the execution issued is admissible. Whitner *vs.* Schlotter, 2 Rawle 359. Barney *vs.* Patterson's lessee, 6 Har. & Johnson 182. Lovell *vs.* Arnold, 2 Mumuf. 167. Jackson *vs.* Wood, 3 Wend, 27–34. In these and similar cases the judgment comes in as a fact—a link in the chain of title—upon the same ground as a conveyance. Fowler *vs.* Savage, 3 Conn. 90–96. * * * And where the recovery of a judgment operates to change or create a title, the same doctrine prevails. On this principle the decisions

of Courts of Admiralty are admitted as they transfer property. * * * So, in Pennsylvania, by recovering a judgment in trespass for carrying away goods, the plaintiff's property in them becomes divested; and consequently, such judgment is admissible in favor of a stranger, who is subsequently sued in assumpsit, by the same plaintiff for the proceeds or price of the goods. Floyd *vs.* Brown, 1 Rawle 121. Marsh *vs.* Pier, 4 *Id.* 273–285—4 Starkie Ev. 1281 and Notes (a) (6)—3 Phillips on Ev., H. & C., Notes 822–823.

The case of Hardwick *vs.* Hook, 8 Georgia Reports 354, is directly in point. That was an action of assumpsit brought by Hook, as Receiver, to recover the hire of certain slaves. Hardwick was not a party to the proceeding in Chancery from which Hook derived his appointment as Receiver. One Harris and a Mrs. Walden's trustee, were the sole parties to that proceeding, and Hook's duty, as Receiver, was to collect the hire and divide it between Harris and Mrs. Walden. When Hook sued Hardwick for the hire and offered in evidence this decree, it was objected to. In discussing this objection, Judge Lumpkin says: "But it is said that Hardwick was not a party to the bill, and that, therefore, the decree was inadmissible against him, that it was *res inter alios acta*. Judgments and decrees are not only evidence of the fact of their rendition, but of all the legal consequences resulting from that fact; whosoever may be the parties to the suit in which it is offered in evidence. The Record may be introduced where it constitutes one of the muniments of the party's title to an estate, as where a deed was made under a decree in Chancery. Barr *vs.* Gratz, 4 Wheaton 213. So here it is competent, by the decree, to establish the plaintiff's right, as Receiver, to maintain this action. The defendant is not effected by it. He is entitled to every defense which he might have had, had the action been brought by Harris, the creditor, and Brantley, the trustee of Mrs. Walden."

It is unnecessary to point out minutely before this high tribunal the applicability of those authorities to the case at bar It is sufficient to say that the effect of the decree from Morgan Superior Court, is to establish against all adverse claimants, the right of the usees of plaintiff to three-eighths of the estate of Alfred Eubanks. No one else has any right to open the question with a view to

having any Court say that the decision of the Court rendering the decree was erroneous. If it had been a decree passing the title to realty or confirming a title already held, could any third person in an ejectment suit, brought by the party holding under the decree, impeach it collaterally for error of law—the decree itself not appealed from or vacated in the Court where it was rendered? Supposing the Court committed error of law in rendering the decree; is it not still perfectly effectual in passing title into the second set of children to three-eghths of the estate? Is it not, in fact, as effectual as a transfer to that extent from those who *should* have been held entitled to take? Suppose the second set of children had been admitted on all hands to be illegitimate, but that they claimed under a *bona fide* transfer made, for a legal consideration, by the first set of children, could Reid, the administrator's surety, be heard to say that the transferees were not legitimate, and, therefore, not entitled to recover what, under the transfer, belonged to them?

Again: In Beaty *vs.* Maryland, 7 Cranch R. 281, which was an action of debt on an administrator's bond, against a surety, the bill of exceptions showed that plaintiff put in evidence on the trial below a record of a judgment against the administrator, and *fieri facias* returned *nulla bona*; also an inventory and two accounts, rendered to the Orphan's Court. Upon this testimony the Circuit Judge instructed the jury that the judgment, inventory and accounts were conclusive evidence of a *devastavit*. Justice Duval said of this ruling: "There can be no doubt that the judgment against the administratrix, the inventory and first two accounts were conclusive evidence of *devastavit*." Chieif Justice Marshall added: "I believe that is the law throughout the United States." Precisely the same evidence was introduced or offered in evidence on the trial of this case in the Court below. As to the amount of the recovery against the sureties, it is held in Georgia that a judgment against the principal is *prima facie* evidence against the surety. 3 Kelly R. 298—17 Georgia R. 537. See, also, 12 Wheaton 515.

Once more: In Ennis *vs.* Smith, 14 Howard Reprt 430, in which case it became important to determine who were the heirs of Kosciusko, the Court say: "The fact of their (the complainants)

relationship, notwithstanding the objection which was made to the proof of it, is sufficient. The proofs are decrees of the Court of Nobility of the Government of Grodno, and another of the Court of Kobryn, in the Russian Province of Lithuania. The originals are in the Orphan's Court, and were filed in it in the regular course of judicial proceeding. * * * * The decree of the Assembly of the Department of Grodno, is an exemplified copy of that made on the 7th May, 1843, in the case of the heirs of Kosciusko, and contains the genealogical chart of the descendants of the sisters of Kosciusko. It is not a judgment *inter partes*, but a foreign judgment *in rem*, and is evidence of the facts adjudicated against all the world.

"An adjudication upon the status of a particular person is as much entitled to the conclusive effect of a judgment *in rem*, as is an adjudication on the status of a particular inanimate thing." 2d Smith's Leading Cases, side page, 439, (4th Am. Ed.) Lord Coke says, in 1st Institutes 352 b. that "Where the record of the estoppel doth run to the disabilitie or legitimation of the person, there all strangers shall take benefit of that record, as *outlawrie*, *excommengement*, *profession*, *attainder of proemunire*, etc., *felonie*, etc., *bastardie*, *muliertie*, and shall conclude the parties, *though they be strangers to the record.*"

A grant of *probate* or of *administration* is in the nature of a decree *in rem*, and is conclusive on all the world. Noel *vs.* Wells, 1 Lev. 235; Allen *vs.* Dundas, 3 T. R. 125. The same is true of a sentence in a matrimonial suit, for it is an adjudication upon the status of the parties. Bunting's case, 4 Co. 29. Kenn's case, 7 Co. 42. Medowcraft *vs.* Huguenin, 4 Moore, (Privy Counsel,) 386. Perry *vs.* Medowcraft, 10 Beav. 122. Phillips *vs.* Berry, 2 T. R. 346.

In Barns *vs.* Jackson, 1 Phil. 582, Lord Chancellor Lyndhurst held the sentence of an Ecclesiastical Court in a suit for *administration*, turning upon the question of which of the parties was next of kin to the intestate, to be conclusive upon that question in a subsequent suit in a Court of Chancery for *distribution*. The pleadings in the cause in Morgan Superior Court made the issue distinctly as to who were the heirs at law, the next of kin, of Alfred Eubanks, deceased, and the issue must have been determined be-

fore any decree could have been rendered. That decree was to that extent an adjudication upon the status of usees, it was a judgment *in rem*, and according to the above citied authorities, it is conclusive upon all the world.

The Court will bear in mind that plaintiff not only sets out these proceedings in Morgan Superior Court in his declaration, but there was a written agreement of counsel on the declartion (see record, page 135) to the effect that a replication in bar, predicated on the decree, was considered as filed; and therefore, the estoppal of this decree was not waived by the state of the pleading. The decree was in fact doubly pleaded. 13 Howard, 335.

If counsel for plaintiff in error has not failed in his object, the following propositions have been established:

1. That there was no ground of objection for variance to the decree from Morgan Superior Court.

2. That if any such ground exisited, it was waived on the trial below, and that it can be removed by a simple amendment.

3. That the decree is final and conclusive as to every matter which it embraces.

4. That if it were not definite and final as to amount, it is still conclusive as the legitimacy of the usees of plaintiff, both as against the parties to it and as against strangers.

5. That it is at least *prima facie* evidence against the sureties as to the amount of the judgment which should be rendered in this action.

II. The next general proposition is, that the estate of Alfred Eubanks is to be distributed according to the laws of Georgia, and not according to the laws of North Carolina. It will be borne in mind that Alfred Eubanks lived in Morgan county, Georgia; that his property, both real and personal, was situated there; and that letters of administration were granted there. Now, the law is, that real property descends according to the law of its *situs*, and personalty according to the law of the domicil of the intestate, and this law of *situs* and of domicil extends to and covers the question of the legitimacy or illegitimacy of the heirs and distributees.

In Ennis *vs.* Smith, 14 Howard, R. 424, Justice Wayne says: "For several hundred years upon the Continent, and in England,

from reported cases for one hundred years, the rule has been that personal property, in cases of intestacy, is to be distributed by the law of the domicil of the intestate at the time of his death. It has been universal for so long a time that it may now be said to be part of the *jus gentium*. * * * In the United States the rule has been fully recognized. 14 Martin Lou. 99. 3 Paige, 182. 2 Gill & Johns. 193–224–228."

"The rule prevails also in the ascertainment of the person who is entitled to take as heir or distributee. It decides whether primogeniture gives a right of preference, or an exclusive right to take the succession; whether a person is legitimate or not to take the succession; whether the person shall take *per stripes* or *per capita*, and the nature and extent of the right of representation."—Ib. To the same effect see sections 481 and 481 a. of Story's Conflict of Laws.

"The descent and heirship of real estate are conclusively governed by the Court of the country within which it is actually situate. No person can take, except those who are recognized as legitimate heirs by the laws of that county; and they take in the proportion and the order which those laws prescribe. This is the indisputable doctrine of the common law." Story on Conflict of Laws, section 483.

"Foreign jurists generally, although not universally, maintain the same doctrine; and accordingly hold that in cases of succession *ab intestato*, we are to ascertain the persons who are to take the inheritance by the *lex loci rei sitae*, whether the question respects legitimacy or primogeniture, or right of representation, or proximity of blood, or next of kin." Story on Conflict of Laws, section 484 a. See also Dawes *vs.* Boylston, 9 Mass. 355. Harvey *vs.* Richards, 1 Mason, 406. 4 Kent's Com. side page, 431, (9th edition.) Schultz *vs.* Pulver, 11 Wendell, 363. Suarez *vs.* Mayor, etc., 2 Sanford's Ch. R. 173.

The case of Suarez *vs.* Mayor, etc., is directly in point. It was there held that personal property descends according to the law of the domicil of the intestate, and that, in consequence, two natural children of James A. Bird, of Carthagena, in the State of New Grenada, there being no legitimate children, were entitled to take one-fifth of certain funds in New York belonging to the de-

ceased, as against his grand-mother, she taking only four-fifths of the funds; it being in proof that such was the law of New Grenada.

The following authorities, among many that might be cited, directly sustain the principle that the *lex loci* as to realty, and *lex domicili* as to personalty must be looked to, to determine who are legitimate heirs of a deceased person. Bruce *vs.* Bruce, 2 Bos. & Pull. 229. Bempde *vs.* Johnson, 3 Vesey, (Sumner's ed.) 198. Summerville *vs.* Lord Summerville, 6 Vesey, (Sumner's ed.) 750. Harrison *vs.* Nixon, 9 Peters, 504. 2 Kent's Com. side page, 430, note d. In this note Chancellor Kent says: "The rule as stated in the text may lead, and has led, to the anomalous result that the same person may be legitimate as to the real estate of his father, and illegitimate as to the personal," etc. Yet the rule is adhered to even in that kind of a case. Here, happily, this cannot happen, because the domicil of intestate and the *situs* of his realty were the same.

It follows that all of Alfred Eubanks' property, both real and personal, is to be distributed according to the laws of Georgia, the place of his domicil and the *situs* of his property. What is the law of Georgia?

"The half blood, on the paternal side, inherit equally with the whole blood." Revised Code, sec. 2448, (5.) Cobb's Digest, page 291.

"If any person or persons, within the limits of this State, being married, do, or shall at any time hereafter, marry any person or persons, the lawful husband or wife being alive, and knowing that such lawful husband or wife is living, such person or persons so offending, shall, on conviction, be punished by confinement at labor in the penitentiary, for any time not less than two nor longer than four years, and the second marriage shall be void; but five years absence of the husband or wife, and no information of the fate of such husband or wife, shall be sufficient cause of acquittal of the person indicted; and in every case the issue of such second marriage, born before the commencement of any prosecution for polygamy, or within the ordinary time of gestation thereafter, shall, notwithstanding the invalidity of such marriage, be considered as legitimate." Revised Code, sec. 4457. Cobb's Digest, page 814.

The usees of plaintiff are the half brothers and sister of the in-

teste on the paternal side, and their father and mother were married after their mother had been deserted more than eight years by her former husband, and he had been absent and no information of his fate had been received during that whole period; therefore they are legitimate by the laws of Georgia, and have a right to inherit the property of their deceased relative in Georgia.

It is no reply to say that this doctrine does not apply, because the usees of plaintiff are not citizens of Georgia, and therefore not embraced within the statute. Section 1791 of the Revised Code provides that bastards shall inherit from their mothers in the same manner as legitimate children. Now, suppose a bastard should be born in North Carolina, and after he had attained his majority his mother should remove to and become a citizen of Georgia, leaving her child a citizen of North Carolina. Supposing the law of North Carolina to be that he could not inherit from his mother, and the law of Georgia being the reverse, would he be entitled to a share of his mother's property at her death? Unquestionably he would. The laws of North Carolina have nothing to do with it. They are made to regulatate the destribution of property there, and Georgia laws must control in its distribution in Georgia.

III. But if this Court should hold that everything put forward in the preceeding portions of this argument is untenable, it is insisted that there is another and distinct ground on which plaintiff is entitled to recover

"The laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at Common Law, in the Courts of the United States in cases where they apply." Act of 1789, Sec. 34.

This Act of Congress makes, not only the construction of State Statutes adopted by the highest Courts of the State, but also all settled rules of property, binding on the Federal Courts. "This Court adopts the State decisions because they settle the law applicable to the case; and the reasons assigned for this course apply as well to rules of construction growing out of the Common Law, as the Statute Law of the State, where applied to the title to lands. And such a course is indispensable in order to procure uniformity; otherwise, the peculiar constitution of the judicial tribunals of the

States and of the United States, would be productive of the greatest mischief and confusion." Jackson *vs.* Chew, 12 Wheaton 167.

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had, it is considered and adjudged by the Court, that the judgment of the Court below, be reversed.

"This Court holding, That complainants under the facts in this case are entitled to recover as distributees of the estate of Afred Eubanks, deceased."

The simple point decided by the Court is, that the usees of plaintiff, who were complainants in that case, were entitled to recover as distributees of the estate of Alfred Eubanks, deceased.

The Court did not decide that the usees of plaintiff were legitimate in North Carolina, although Judge Harries does say that they probably were. Counsel does not think it really necessary to argue that question, because it does not arise in this case. This opinion does announce what the policy of Georgia is, as to distributing property to parties situated as the second set of children are, and that policy is a part of the laws of Georgia.

I take it, therefore, as clear that it is a "rule of property"—that it is the *law* in the State of Georgia—that the usees of plaintiff, having been begotten and born under the circumstances detailed in the evidence contained in the record, are to be deemed legitimate and entitled to inherit property in this State, whatever may be the laws, or policy of any other State. This being the law, the Federal Courts should render their decisions in conformity thereto. Thus we shall be spared the painful conflict of two decisions, one requiring an administrator to distribute property to one person, and the other requiring his sureties to make good his default to another and different person. Thus, too, will be defeated (I say it outside of the redcord) an iniquitous conspiracy between an administrator and his surety, by which the estate of a dead man is placed in the hands of a wealthy surety by an insolvent principal, where it is being, or has been, appropriated to the private use of one or both, and where, if the rulings of the Court below is right, no Court on earth is competent to reach it.

It will be insisted that the usees of plaintiff are bastards under the laws of North Carolina. If all that has been said in this argument is not false, it matters not what may be their legal status in North Carolina. It is competent for the laws of Georgia to distribute property to bastards, even to those who are bastards under the laws of that State.

But are these nsees illegitimate in North Carolina? They are probably not, for the following reasons:

1. The provisos to the Act of 1790 (see Record, page 110,) are not repealed by the amending Act of 1809. The whole object and effect of this amending Act, was to take away the benefit of clergy from persons convicted of bigamy. Clergy was restored by Act of 1829 (See Record, page 111 and 112). This is obvious. The Act of 1809 repeals only so much of the Act of 1790 as is necessarily repugnant to it, and there is no conflict, except as to clergy.

See Dwarris on Statutes pp. 531–2–3., 16 Peters 243.

2. No decision from North Carolina can be produced which says that if a married woman is abandoned by her husband and he remains absent and not heard from for seven years, and she, believing him dead, marries again and has children by the second marriage, those children are illegitimate; and such a decision will probably never be made. The inclination of courts now is against the bastardizing of children for conduct which is blameless in both parents. I know that respectable authorities can be produced which go to the extent of holding that children born under such circumstances would be illegitimate. But respectable authorities can, at the same time, be produced holding the contrary doctrine. This case in the 34th Georgia Reports is an authority in favor of the legitimacy of such children. The civil law, which prevails to a greater or less extent in all the States on the subject of marriage and divorce, would hold such children legitimate. It was said by the Supreme Court of Alabama, in Wall *vs.* Williamson, 8th Alabama, 48–51, that polygamous marriages contracted in a country where polygamy was allowed, would be decided valid in Christian countries on a collateral proceeding. "A parallel case," add the Court, "to a Turkish or other marriage in an infidel country will probably be found among all our savage tribes, but can it be possible that the children must be illegitimate if born of the second or other succeeding wife?" In Reeve's Dom. Rel. page 206, the author says: "It has been holden that it is not necessary that a divorce should be had to entitle the party to marry again, the law proceeding on the ground that the person so not heard of for seven years is dead."

IV. Finally. This being a case where the amount of the judgment which plaintiff is entitled to recover, is definite and certain, this Court will proceed under section 24 of the Act of 1789, to render such judgment as the District Court should have rendered. If the ruling of this Court shall be that the decree from Morgan Superior Court should have been admitted in evidence, then the amount for which George B. Stovall should have judgment for the

use of David Eubanks, will be $3,670.00, with interest at 7 per cent. from Novembnr 1st, 1866, (see decree, Record pages 66 to 68,) for the use of James M. Hatch and his wife, Sarah, the same amount, (see same pages,) and for the use of Geo. Eubanks, the same, subject to a credit of $683.02, which amount was paid on the fi. fa. issued in his favor on the 5th February, 1867. (See same pages, and also page 73.) Calculating interest to date of this payment and then deducting the amount paid, and the result is that George B. Stovall is entitled to receive for the use of George Eubanks $3,020.20, with interest at 7 per cent. from February 5, 1867. If, on the other hand, the ruling of this Court shall be that the decree from Morgan Superior Court was properly rejected, but that the estate of Alfred Eubanks is nevertheless to be distributed according to the laws of Georgia, the amount of the recovery will not be the same, because the decree does not precisely follow the returns of the administrator, which are found in the record (pages 19 to 31,) and which were in evidence on the trial below. A liberal deduction was made by counsel on the trial in Morgan Superior Court, and the administrator was credited with various sums to which he could not prove he was entitled The great controversy was as the right of complainants to come in as heirs of Alfred Eubanks. This being decided in the affirmative, (I state this outside of the record,) counsel withdrew from the Court room, and in drawing up the verdict and decree voluntarily allowed the administrator these sums to which he was not entitled in law, but which, in view of the losses of the late civil war, they consented to. By the returns of Banks, the administrator, (pages [illegible] of the record,) the share of each of the eight distributees, December 25th, 1858, when the sale list shows all the money coming to the estate was due, was - - - - - - - - - - $2,611.20
Interest at 7 per cent. per annum to March 17, 1870, 2,053.38

Share of David Eubanks and Hatch and wife, each - $4,664.58

The share of George Eubanks would be the same, less $683.02, paid February 5th, 1867. This payment did not equal the interest due and, therefore, it is simply to be deducted from $4,664.58, leaving $3,981.56 to which Geo. Eubanks was entitled March 17th, 1870. These are strictly the amounts which should have been found due but for the decree; still usees would have been satisfied to take what the decree gave them. The result will be the same as this last, in case the Court shall hold that the decree from Morgan Superior Court settles the status of usees, but is void, or too indefinite, as to the amount going to each distributee.

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~1866~~ 218

P. H. MORGAN ET AL., COMMISSIONERS OF THE BANK OF LOUISIANA, APPELLANTS,

vs.

JOHN THORNHILL, GEORGE L. THOMPSON, ISIDORE NEWMAN, AND SARAH WILLIAMS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED APRIL 27, 1870.